

District of Columbia Code

1981 Edition



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DISTRICT OF COLUMBIA CODE ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF
COLUMBIA BY REASON OF BEING GENERAL AND
PERMANENT LAWS OF THE UNITED STATES), AS OF
MARCH 25, 1998, AND NOTES
TO COURT DECISIONS THROUGH
MARCH 1, 1998

VOLUME 7

1998 REPLACEMENT

TITLE 30—DOMESTIC RELATIONS

TITLE 31— EDUCATION AND CULTURAL INSTITUTIONS

TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS

TITLE 33—FOOD AND DRUGS

TITLE 34—HOTELS AND LODGING HOUSES

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MICHIE

CHARLOTTESVILLE, VIRGINIA

1998

DISTRICT OF COLUMBIA
CODE
1981 EDITION

With Provision for Supplement Pocket Page

CONTAINING THE LATEST ORIGINALLY ENACTED IN THIS SESSION
LEGISLATION AS OF THE DATE OF THE DISTRICT OF
COLUMBIA'S 1981 EDITION

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USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.

1. District Courts and Commissioners
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5. Health and Sanitary
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With the laws enacted as laws

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CHAPTER 1. MARRIAGE.

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§ 30-101. Marriages void ab initio — In general.

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

(1) The marriage of a man with his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter;

(2) The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son, sister's son;

(3) The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1283; 1973 Ed., § 30-101.)

Cross references. — As to proceedings to annul marriage, see §§ 16-903 and 16-904.

Section references. — This section is referred to in § 16-903.

Marriages which are not polygamous, incestuous or otherwise declared void by statute will be recognized as valid in every jurisdiction. *Loughran v. Loughran*, 292 U.S. 216, 54 S. Ct. 684, 78 L. Ed. 1219 (1934).

And marriage void under the laws of the state where it was celebrated is also void in the District of Columbia. *Rhodes v. Rhodes*, 96 F.2d 715 (D.C. Cir.), cert. denied, 305 U.S. 632, 59 S. Ct. 99, 83 L. Ed. 405 (1938).

Applicability to persons of the same sex. — When the City Council passed the Marriage and Divorce Act, it is contemplated that the parties subject to such legislation would be a man and woman — not persons of the same sex. *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

Constitutionality of prohibition of same-sex marriages. — Due process and equal protection clauses do not require the District to authorize same-sex marriages. *Dean v. District of Columbia*, 120 WLR 1617 (Super. Ct. 1992).

Intent to prohibit same-sex marriages. — The language and legislative history of the marriage statutes, i.e., this chapter, demonstrate that neither Congress nor the Council of the District of Columbia has ever intended to define "marriage" to include same-sex unions. *Dean v. District of Columbia*, App. D.C., 653 A.2d 307 (1995).

The use of gender-based terminology in this section to prohibit certain marriages reflects a legislative understanding that marriage, as understood by Congress at the time of original enactment and thereafter, is inherently a male-female relationship. *Dean v. District of Columbia*, App. D.C., 653 A.2d 307 (1995).

Common-law marriage is recognized in the District of Columbia. *Matthews v. Britton*, 303 F.2d 408 (D.C. Cir. 1962).

Common-law marriage is not invalid. *Hoage v. Murch Bros. Constr. Co.*, 50 F.2d 983 (D.C. Cir. 1931).

And is valid until terminated. — Where a common-law marriage has not been terminated by death or decree of divorce, an attempted marriage in Maryland of the common-law husband to another woman was void in the District. *Lee v. Lee*, App. D.C., 201 A.2d 873 (1964).

Removal of an impediment to marriage while the parties continued to live together gives rise to a "common-law marriage." *McVicker v. McVicker*, 130 F.2d 837 (D.C. Cir. 1942).

Common-law marriage resulting upon divorce of prior spouse. — If a couple agree to be married before the removal of an impediment, and live together as husband and wife, a

common-law union results when the woman's prior spouse was awarded a divorce. *Matthews v. Britton*, 303 F.2d 408 (D.C. Cir. 1962).

Foreign divorce decree recognized in District. — Divorce decree of a Virginia court granted a person acquiring domicile to obtain a divorce with the intention of remaining for an indefinite period is valid under Virginia law and will be recognized in the District of Columbia. *Goodloe v. Hawk*, 113 F.2d 753 (D.C. Cir. 1940).

Doctrines of laches and estoppel applicable. — In determining the effect to be given an irregular foreign divorce decree, the doctrines of "laches" and "estoppel" may be applied not only in annulment actions but also in divorce action where attack upon marriage by a party thereto is made by way of defense. *Ruppert v. Ruppert*, 134 F.2d 497 (D.C. Cir. 1942).

In determining whether to interpose the bar of equitable estoppel in action to annul a marriage, the court must consider the parties involved, the effect of ultimate decision on third parties not before the court, the nature of rights sought to be vindicated, and public policy. *Sears v. Sears*, 293 F.2d 884 (D.C. Cir. 1961).

Husband not estopped from pleading invalidity of second marriage. — A divorced husband, marrying another woman in Maryland, while both of them were domiciled in the District, within 6 months after entry of a divorce decree in the District, was not estopped to plead invalidity of second marriage as a ground to vacate an order against him for support of second wife's minor child, whose paternity he denied. *Oliver v. Oliver*, 185 F.2d 429 (D.C. Cir. 1950).

Remarriage after annulment. — Remarriage of a wife after a final decree of annulment but before expiration of the period for appeal is valid. *Tillinghast v. Tillinghast*, 25 F.2d 531 (D.C. Cir. 1928).

Presumption of validity of most recent marriage. — While the presumption of the validity of the most recent marriage is not conclusive, it is one of the strongest in law and the party attacking it has the burden of rebutting the presumption by strong, distinct, satisfactory and conclusive evidence. *Johnson v. Young*, App. D.C., 372 A.2d 992 (1977).

Where deceased wife's "first" husband produced evidence that their marriage had never been dissolved, wife's "second" marriage would not be presumed valid, despite an affidavit signed by wife and her "second" husband indicating their intent to live together as husband and wife. *Berryman v. Thorne*, App. D.C., 700 A.2d 181 (1997).

Cited in *Evans v. Neumann*, 278 F. 1013 (D.C. Cir. 1922); *Richardson v. Browning*, 18 F.2d 1008 (D.C. Cir. 1927); *Abramson v.*

Abramson, 49 F.2d 501 (D.C. Cir. 1931); Thomas v. Murphy, 107 F.2d 268 (D.C. Cir. 1939); Koonin v. Hornsby, App. D.C., 140 A.2d 309 (1958); Duley v. Duley, App. D.C., 151 A.2d 255

(1959); Clagett v. King, App. D.C., 308 A.2d 245 (1973); Jackson v. Young, App. D.C., 546 A.2d 1009 (1988); Cobb v. Cobb, 116 WLR 1993 (Super. Ct. 1988).

§ 30-102. Same — Judicial decree.

Any of such marriages may also be declared to have been null and void by judicial decree. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1284; 1973 Ed., § 30-102.)

Cross references. — As to proceedings to annul marriage, see §§ 16-903 and 16-904.

Judicial discretion to annul marriage performed under false representation. — Where a boy obtained his father's consent to marry by falsely representing that the girl was pregnant, and obtained a Virginia marriage

license under false pretenses, under the District of Columbia statutes the marriage was not void ab initio, but merely void when declared so by court decree, the court having judicial discretion to refuse to grant the annulment. Duley v. Duley, App. D.C., 151 A.2d 255 (1959).

§ 30-103. Marriages void from date of decree; age of consent.

The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

- (1) The marriage of an idiot or of a person adjudged to be a lunatic;
- (2) Any marriage the consent to which of either party has been procured by force or fraud;
- (3) Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state;
- (4) When either of the parties is under the age of consent, which is hereby declared to be 16 years of age. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1285; June 30, 1902, 32 Stat. 543, ch. 1329; Aug. 12, 1937, 50 Stat. 626, ch. 596, § 1; 1973 Ed., § 30-103; July 22, 1976, D.C. Law 1-75, § 5(d), 23 DCR 1182.)

Cross references. — As to proceedings to annul marriage, see §§ 16-903 and 16-904.

Section references. — This section is referred to in § 16-903.

Legislative history of Law 1-75. — Law 1-75 was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Suit for annulment because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. Mackey v. Peters, 22 App. D.C. 341 (1903).

Annulment was granted on the basis of fraud where husband failed to disclose his deeply held religious and cultural views con-

cerning the necessity of a religious marriage in his faith in the Maronite Catholic Church in order for there to be a valid marriage which would include the incidents of having sexual relations and procreation of children. C.B. v. A.S., 118 WLR 2181 (Super. Ct. 1990).

Marriages procured by fraud may be set aside at instance of innocent party. Stone v. Stone, 136 F.2d 761 (D.C. Cir. 1943).

Proof for an annulment on the ground of fraud must be clear and convincing. Zoglio v. Zoglio, App. D.C., 157 A.2d 627 (1960).

Concealment of pregnancy is fraud. Lenoir v. Lenoir, 24 App. D.C. 160 (1904).

Infertility is not a ground for an annulment of a marriage, though the prime object of marriage is thus defeated. Burroughs v. Burroughs, 4 F.2d 938 (D.C. Cir. 1925).

Cited in Tillinghast v. Tillinghast, 25 F.2d 531 (D.C. Cir. 1928); Hitchens v. Hitchens, 47 F. Supp. 73 (D.D.C. 1942); Duley v. Duley, App. D.C., 151 A.2d 255 (1959); Dean v. District of Columbia, 120 WLR 769 (Super. Ct. 1991).

§ 30-104. Persons allowed to institute annulment proceedings.

A proceeding to declare the nullity of a marriage may be instituted in the case of an infant under the age of consent by such infant, through a next friend, or by the parent or guardian of such infant; and in the case of an idiot or lunatic, by next friend. But no such proceedings shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and wilfully contracted any marriage declared illegal by the foregoing sections. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1286; June 30, 1902, 32 Stat. 543, ch. 1329; 1973 Ed., § 30-104.)

Cross references. — As to proceedings to annul marriage, see §§ 16-903 and 16-904.

Bringing a suit for annulment of a marriage by a minor in name of a next friend is proper where minor is under age of consent, where minor is over age of consent, suit should be brought in minor's name. *Koonin v. Hornsby*, App. D.C., 140 A.2d 309 (1958).

Suit for annulment because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. *Mackey v. Peters*, 22 App. D.C. 341 (1903).

Second sentence of this section refers to a person with intrinsic legal capacity and does not allude to extrinsic impediments to a valid marriage. *Sears v. Sears*, 293 F.2d 884 (D.C. Cir. 1961).

Cited in *Rhodes v. Rhodes*, 96 F.2d 715 (D.C. Cir.), cert. denied, 305 U.S. 632, 59 S. Ct. 99, 83 L. Ed. 405 (1938); *Ruppert v. Ruppert*, 134 F.2d 497 (D.C. Cir. 1942); *Duley v. Duley*, App. D.C., 151 A.2d 255 (1959); *Taylor v. Taylor*, App. D.C., 233 A.2d 43 (1967); *Clagett v. King*, App. D.C., 308 A.2d 245 (1973); *In re M.M.D.*, App. D.C., 662 A.2d 837 (1995).

§ 30-105. Illegal marriages entered into in another jurisdiction.

If any marriage declared illegal by the foregoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1287; 1973 Ed., § 30-105.)

Husband not estopped from pleading invalidity of second marriage. — A divorced husband, marrying another woman in Maryland, while both of them were domiciled in the District, within 6 months after entry of a divorce decree in the District, was not estopped to plead invalidity of second marriage under Dis-

trict statutes as a ground to vacate an order against him for support of second wife's minor child, whose paternity he denied. *Oliver v. Oliver*, 185 F.2d 429 (D.C. Cir. 1950).

Cited in *Loughran v. Loughran*, 292 U.S. 216, 54 S. Ct. 684, 78 L. Ed. 1219 (1934).

§ 30-106. Persons authorized to celebrate marriages.

(a) For the purposes of this section, the term:

(1) "Religious" includes or pertains to a belief in a theological doctrine, a belief in and worship of a divine ruling power, a recognition of a supernatural power controlling man's destiny, or a devotion to some principle, strict fidelity or faithfulness, conscientiousness, pious affection, or attachment.

(2) "Society" means a voluntary association of individuals for religious purposes.

(b) For the purpose of preserving the evidence of marriages in the District of Columbia, every minister of any religious society approved or ordained according to the ceremonies of his religious society, whether his residence is in the District of Columbia or elsewhere in the United States or the territories, may be authorized by any judge of the Superior Court of the District of Columbia to celebrate marriages in the District of Columbia. Marriages may also be performed by any judge or justice of any court of record; provided, that marriages of any religious society which does not by its own custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such religious society, the license in such case to be issued to, and returns to be made by, a person appointed by such religious society for that purpose. The Clerk of the Superior Court of the District of Columbia or such deputy clerks of the Court as may, in writing, be designated by the Clerk and approved by the Chief Judge, may celebrate marriages in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1288; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a), (b); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 30-106; Jan. 26, 1982, D.C. Law 4-60, § 2, 28 DCR 4768.)

Section references. — This section is referred to in §§ 30-107 and 30-112.

Legislative history of Law 4-60. — Law 4-60 was introduced in Council and assigned Bill No. 4-251, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 15, 1981, and September 29, 1981, respectively.

Signed by the Mayor on October 30, 1981, it was assigned Act No. 4-106 and transmitted to both Houses of Congress for its review.

Cited in *Washington Ethical Soc'y v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957); *Dean v. District of Columbia*, 120 WLR 769 (Super Ct. 1991).

§ 30-107. Celebration of marriage by unauthorized persons.

If anyone except a minister or other person authorized by § 30-106 shall on and after March 3, 1901, celebrate the rites of marriage in said District, he shall be subject to the penalty prescribed in § 30-108. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1289; 1973 Ed., § 30-107.)

§ 30-108. Celebration of marriage without license.

No person authorized hereby to celebrate the rites of marriage shall do so in any case without first having delivered to him a license therefor addressed to him issued from the Clerk's Office of said Superior Court of the District of Columbia under a penalty of not more than \$500, in the discretion of the Court, to be recovered upon information in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1290; June 30, 1902, 32 Stat. 543, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 5,

1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 30-108.)

Section references. — This section is referred to in § 30-107.

§ 30-109. Issuance of license — Waiting period.

A license to marry shall not be issued until 3 days have elapsed from date of application for issuance of said license. (Aug. 12, 1937, 50 Stat. 626, ch. 596, § 2; 1973 Ed., § 30-109.)

Cross references. — As to waiver of this section, see § 30-118.

Section references. — This section is referred to in § 30-118.

§ 30-110. Same — Duty of Clerk; false swearing by applicant deemed perjury.

It shall be the duty of the Clerk of the Superior Court of the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names and ages of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the Clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1291; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 30-110; Apr. 7, 1977, D.C. Law 1-107, title I, § 113(a), 23 DCR 8737.)

Legislative history of Law 1-107. — Law 1-107 was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976 and September 15, 1976, and second readings on November 22, 1976 and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

Former requirement of section held unconstitutional. — Former requirement of this

section that marriage license applications record color of applicant was unconstitutional under equal protection clause. *Pedersen v. Burton*, 400 F. Supp. 960 (D.D.C. 1975).

Applicability to persons of the same sex. — When the City Council passed the Marriage and Divorce Act, it contemplated that the parties subject to such legislation would be a man and a woman — not persons of the same sex. *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

§ 30-111. Consent of parent or guardian.

If any person intending to marry and seeking a license therefor shall be under 18 years of age, and shall not have been previously married, the said Clerk shall not issue such license unless a parent, or, if there be neither father nor mother, the guardian, if there be such, shall consent to such proposed marriage, either personally to the Clerk, or by an instrument in writing

attested by a witness and proved to the satisfaction of the Clerk. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1292; 1973 Ed., § 30-111; July 22, 1976, D.C. Law 1-75, § 5(a), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87, § 32, 23 DCR 2544.)

Legislative history of Law 1-75. — See note to § 30-103.

Legislative history of Law 1-87. — Law 1-87 was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings

on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Cited in *Jones v. Jones*, 72 F.2d 829 (D.C. Cir. 1934); *Hitchens v. Hitchens*, 47 F. Supp. 73 (D.D.C. 1942).

§ 30-112. Form of license; return; coupons.

Licenses to perform the marriage ceremony shall be addressed to some particular minister, magistrate, or other person authorized by § 30-106 to perform or witness the marriage ceremony and shall be in the following form:
Number

To, authorized to celebrate (or witness) marriages in the District of Columbia, greeting:

You are hereby authorized to celebrate (or witness) the rites of marriage between, of, and, of, and having done so, you are commanded to make return of the same to the Clerk's Office of the Superior Court of the District of Columbia within 10 days under a penalty of \$50 for default therein.

Witness my hand and seal of said Court this day of, anno Domini

..... Clerk.

By Assistant Clerk.

Said return shall be made in person or by mail on a coupon issued with said license and bearing a corresponding number therewith within 10 days from the time of said marriage, and shall be in the following form:

Number

I,, who have been duly authorized to celebrate (or witness) the rites of marriage in the District of Columbia, do hereby certify that, by authority of a license of corresponding number herewith, I solemnized (or witnessed) the marriage of and, named therein, on the day of, at, in said District.

A 2nd coupon, of corresponding number with the license, shall be attached to and issued with said license, to be given to the contracting parties by the minister or other person to whom such license was addressed, and shall be in the following form:

Number

I hereby certify that on this day of, at, and were by (or before) me united in marriage in accordance with the license issued by the Clerk of the Superior Court of the District of Columbia.

Name,

Residence

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1293; June 30, 1902, 32 Stat. 543, ch. 1329; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 30-112.)

§ 30-113. Failure to make return.

Any minister or other person, having solemnized or witnessed the rites of marriage under the authority of a license issued as aforesaid, who shall fail to make return as therein required, shall be liable to a penalty of \$50 upon conviction of said failure upon information in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1294; Apr. 23, 1904, 33 Stat. 298, ch. 1490, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 30-113.)

§ 30-114. Record books.

The Clerk of the said Court shall provide a record book in his office, consisting of applications and licenses in blank, to be filled up by him with the names and residences of the parties for whose marriage any license may have been issued, said applications and licenses to be numbered consecutively from one upward, and also a record book in which shall be recorded, in the order of their numbers, the certificates of the minister or other persons authorized, upon their return to said office, corresponding to said record book of licenses issued, and a copy of any license and certificate of marriage so kept and recorded, certified by the Clerk under his hand and seal, shall be competent evidence of the marriage. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1295; 1973 Ed., § 30-114.)

Cross references. — As to fees for copies of transcript of any record of marriage, see §§ 6-220 and 6-225.

As to penalty for making false or fictitious

§ 30-115. Issue of marriages of colored persons.

The issue of any marriage of colored persons contracted and entered into according to any custom prevailing at the time in any of the states wherein the same occurred shall, for all purposes of descent and inheritance and the transmission of both real and personal property within the District of Columbia, be deemed and held to be legitimate and capable of inheriting and transmitting inheritance, and taking as next of kin and distributees according to law, from and to their parents or either of them, and from and to those from whom such parents or either of them may inherit or transmit inheritance, anything in the laws of such state to the contrary notwithstanding; provided, that nothing herein shall be construed as implying that any such marriage is not valid or such issue legitimate for all other purposes. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1297; 1973 Ed., § 30-117.)

§ 30-116. Public inspection and examination of applications.

All applications for marriage licenses shall be open to inspection as public records. All such applications upon which licenses have not yet been issued shall be kept together in a separate file readily accessible to public examination. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 1; 1973 Ed., § 30-118.)

Section references. — This section is referred to in § 30-121.

Temporary amendment of section. — Section 6(a) of D.C. Law 12-(Act 12-279) amended this section to read as follows:

“All applications for marriage licenses shall be open to inspection as public records, except as limited by § 30-116.1. All such applications upon which licenses have not yet been issued shall be kept together in a separate file readily accessible to public examination.”

Temporary addition of § 30-116.1. — Section 6(b) of D.C. Law 12-(Act 12-279) added a § 30-116.1, to read as follows:

“§ 30-116.1. Social Security numbers to be filed with application.

“(a) Each applicant for a marriage license shall record on the application each Social Security number assigned to the applicant. The page containing the Social Security number shall be separate from the remainder of the application.

“(b) The page of the application containing the Social Security number shall be disclosed only:

“(1) For a purpose directly related to the establishment of paternity, or the establish-

ment, modification, or enforcement of a child or spousal support order; and

“(2) To the applicant, the other spouse, the child of the applicant or spouse, their attorneys of record, the IV-D agency, a District agency that has entered into a cooperative agreement with the IV-D agency, the IV-D agency of another state, or a private entity with which the District has contracted regarding paternity and child support services.”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 6(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114)

For temporary addition of § 30-116.1, see § 6(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Cited in *Pedersen v. Burton*, 400 F. Supp. 960 (D.D.C. 1975); *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

§ 30-117. Premarital blood tests; statement regarding test to be filed with application.

No application for a marriage license shall be received unless there shall be filed therewith a statement or statements, upon a form prescribed by the Mayor of the District of Columbia, signed by: (1) a person in the District of Columbia certified by the Department of Human Services as duly qualified to administer and interpret a standard laboratory blood test; (2) a physician licensed to practice medicine or osteopathy in the District of Columbia, a state, or a territory or possession of the United States; or (3) a commissioned medical officer in the military service or in Public Health Service of the United States; that the applicant has submitted to a standard laboratory blood test within 30 days prior to the filing of such application, and that, in the opinion of such certified person, physician, or medical officer, based upon the result of that test, the applicant is not infected with syphilis in a stage of that disease in which it can be transmitted to another person. Such statement shall not disclose the technical data upon which it is based. Any such statement shall include the name of the person or laboratory administering the test, the name of the test

administered, the exact name of the applicant, and the date of the test. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 2; 1973 Ed., § 30-119.)

Cross references. — As to waiver of this section, see § 30-118.

Section references. — This section is referred to in §§ 30-118, 30-119, 30-120, and 30-121.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board

of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 30-118. Waiver of certain requirements.

If a judge of the Superior Court of the District of Columbia determines that public policy or the physical condition of either of the persons applying for a marriage license requires the intended marriage to be celebrated without delay, he may waive the provisions of §§ 30-109 and 30-117, and a license may be issued without regard to such sections. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 3; July 7, 1967, 81 Stat. 122, Pub. L. 90-53, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a); 1973 Ed., § 30-120.)

Section references. — This section is referred to in § 30-121.

§ 30-119. Financial inability to pay for blood test or required statement.

In any case in which a person is unable for financial reasons to obtain the services of: (1) a private physician; or (2) any other person in the District of

Columbia, certified by the Department of Human Services as duly qualified to administer and interpret a standard laboratory blood test; to conduct such test or sign the statement required by § 30-117, any medical officer of the Department of Human Services of the District of Columbia is authorized to conduct such test and provide such statement at no cost to such person. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 4; 1973 Ed., § 30-121.)

Section references. — This section is referred to in § 30-121.

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of

members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 30-120. Confidential character of blood test information.

Any information obtained from any laboratory blood test required under § 30-117 shall be regarded as confidential by each person, agency, or committee who obtains, transmits, or receives such information. (Oct. 15, 1966, 80 Stat. 960, Pub. L. 89-682, § 5; 1973 Ed., § 30-122.)

Section references. — This section is referred to in § 30-121.

§ 30-121. Violations; prosecutions.

Whoever: (1) knowingly divulges, other than in accordance with the provisions of §§ 30-116 to 30-121, any information, derived from the laboratory blood test required by § 30-117, relating to any person suffering, or suspected to be suffering from, syphilis; (2) knowingly misrepresents any fact called for by the statement required by such section, or knowingly falsifies any material fact in connection with the laboratory blood test required by such section; (3) knowingly issues a marriage license without having received the statement required under such section or an order of the Superior Court of the District of Columbia issued under § 30-118; or (4) otherwise fails to comply with any other provision of §§ 30-116 to 30-121; shall be imprisoned for not more than 6 months, or fined not more than \$250, or both. Prosecutions for violations of this section shall be conducted by the Corporation Counsel for the District of

§ 30-121

DOMESTIC RELATIONS

Columbia. (Oct. 15, 1966, 80 Stat. 960, Pub. L. 89-682, § 6; July 7, 1967, 81 Stat. 122, Pub. L. 90-53, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a); 1973 Ed., § 30-123.)

CHAPTER 1A. PREMARITAL AGREEMENTS.

Sec.

30-141. Definitions.

30-142. Formalities.

30-143. Content.

30-144. Effect of marriage.

30-145. Amendment; revocation.

Sec.

30-146. Enforcement.

30-147. Void marriage.

30-148. Limitation of actions.

30-149. Applicability.

30-150. Application and construction.

§ 30-141. Definitions.

For the purposes of this chapter, the term:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings. (Feb. 9, 1996, D.C. Law 11-82, § 2, 42 DCR 6770.)

Legislative history of Law 11-82. — Law 11-82, the "Uniform Premarital Agreement Act of 1995," was introduced in Council and assigned Bill No. 11-227, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on Octo-

ber 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-159 and transmitted to both Houses of Congress for its review. D.C. Law 11-82 became effective on February 9, 1996.

§ 30-142. Formalities.

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration. (Feb. 9, 1996, D.C. Law 11-82, § 3, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

§ 30-143. Content.

(a) Parties to a premarital agreement may contract with respect to:

(1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) The disposition of property upon separation, marital dissolution, annulment, death, or the occurrence or nonoccurrence of any other event;

(4) The modification or elimination of spousal support;

(5) The making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) The ownership rights in, and disposition of, the death benefit from a life insurance policy;

(7) The choice of law governing the construction of the agreement; and

(8) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement. (Feb. 9, 1996, D.C. Law 11-82, § 4, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

§ 30-144. Effect of marriage.

A premarital agreement becomes effective upon marriage. (Feb. 9, 1996, D.C. Law 11-82, § 5, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

§ 30-145. Amendment; revocation.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration. (Feb. 9, 1996, D.C. Law 11-82, § 6, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

§ 30-146. Enforcement.

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) That party did not execute the agreement voluntarily; or

(2) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law. (Feb. 9, 1996, D.C. Law 11-82, § 7, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

§ 30-147. Void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result, unless the agreement expressly provides that it shall be enforceable in the event that the marriage is later determined to be void. (Feb. 9, 1996, D.C. Law 11-82, § 8, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

§ 30-148. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party. (Feb. 9, 1996, D.C. Law 11-82, § 9, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

§ 30-149. Applicability.

This chapter applies to any premarital agreement executed on or after February 9, 1996. (Feb. 9, 1996, D.C. Law 11-82, § 10, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

§ 30-150. Application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. (Feb. 9, 1996, D.C. Law 11-82, § 11, 42 DCR 6770.)

Legislative history of Law 11-82. — See note to § 30-141.

CHAPTER 2. PROPERTY RIGHTS.

Sec.

30-201. Rights enumerated.

§ 30-201. Rights enumerated.

The fact that a person is or was married shall not, after October 1, 1976, impair the rights and responsibilities of such person, which are hereby granted or confirmed, to acquire from anyone, and to hold and dispose of, in any manner, as his or hers, property of any kind, or to accept and be bound by any covenant or agreement relating to any property or debt, or to contract or engage in any trade, occupation or business arrangement or in any civil litigation of any sort (whether in contract, tort or otherwise) with or against anyone including such person's spouse, to the same extent as an unmarried person, and neither the spouse of such person nor the spouse's property shall be liable because of any contract or tort by such person in which the spouse has not directly or indirectly participated, except that both spouses shall be liable on any debt, contract or engagement entered into by either of them during their marriage for necessities for either of them or for their dependent children. A married minor shall be subject to the same disabilities, including the requirement for appointment of a guardian of the minor's estate, as an unmarried minor, except as otherwise provided by law. This section shall not be deemed to affect the law relating to dower, ownership of property held by the husband and wife as tenants by the entireties, inheritance of property, actions for loss of consortium, family relations, or, except as to necessities purchased during marriage, obligations for marital support. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 8; Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, § 6; 1973 Ed., § 30-201; July 22, 1976, D.C. Law 1-75, § 5 (b), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87, § 33(a), 23 DCR 2544.)

Cross references. — As to abolition of curtesy and extension of dower rights to both husband and wife, see § 19-102.

As to devises and bequests to surviving spouse and effects on other rights, see § 19-112.

Legislative history of Law 1-75. — Law 1-75 was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-87. — Law 1-87 was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it

was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

This section controls suits filed after its effective date. — Where creditor filed suit against husband and wife after this section had gone into effect, this section, and not the statute in effect when the husband opened the account, controls their liability. *Lawson v. Sears, Roebuck & Co.*, App. D.C., 473 A.2d 379 (1984).

Property passes to surviving spouse. — Real property held by husband and wife as tenants by the entireties passes to surviving spouse if no final divorce decree has yet been entered. *Miller v. Miller*, App. D.C., 487 A.2d 1156 (1985).

Tenancy by the entireties is recognized whether the subject matter is real or personal. In re Estate of Wall, 440 F.2d 215 (D.C. Cir. 1971).

Tenancy by entirety is a convenient mode of protecting a surviving spouse from inconvenient administration of the dece-

dent's estate and from the other's improvident debts. *Fairclaw v. Forrest*, 130 F.2d 829 (D.C. Cir. 1942), cert. denied, 318 U.S. 756, 63 S. Ct. 531, 87 L. Ed. 1130 (1943).

Each spouse is entitled to the enjoyment and benefits of the whole property held by entirety and neither has a separate estate therein which may be subjected to a conveyance or execution. *Fairclaw v. Forrest*, 130 F.2d 829 (D.C. Cir. 1942), cert. denied, 318 U.S. 756, 63 S. Ct. 531, 87 L. Ed. 1130 (1943).

Good faith reliance is sufficient. — Good faith reliance by persons contracting with husband to purchase realty owned by spouses as tenants by entireties, on his promise to have a committee appointed to accept the contract for his incompetent wife, did not entitle purchasers to possession of property after notice by the husband that he had decided not to sell property and that no committee would be appointed for wife. *Deschenes v. McFerron*, App. D.C., 125 A.2d 386 (1956).

Wife's security for husband's loan not violative of section. — The indorsement by a wife, of stock certificates which are delivered to her husband to be used as security for his loan, does not violate this section, the wife having no part in the transaction. *Columbia Nat'l Bank v. Shacklett*, 18 F.2d 172 (D.C. Cir. 1927).

Relative rights of spouses. — Where a wife was not the "owner" of her husband's taxi, nor did she have the property or "title" to it, she

could not transfer the vehicle, while her husband, as the registered owner, had the right to dispose of it without consulting her. *Tesfamariam v. District of Columbia Dep't of Consumer & Regulatory Affairs, Ins. Admin.*, App. D.C., 645 A.2d 1105 (1994).

Interspousal immunity is abolished by this statute. *Turner v. Taylor*, App. D.C., 471 A.2d 1010 (1984).

Tort action against spouse alleging conduct constituting intentional infliction of emotional distress was permissible as interspousal immunity is abolished. *Rubenstein v. Rubenstein*, 117 WLR 729 (Super. Ct. 1989).

Medical bills. — Where the husband had acquiesced to coverage of medical costs related to wife's surgery, the order requiring him to submit insurance claim forms should have encompassed all the outstanding medical bills which were incurred during the parties' marriage. *Bowser v. Bowser*, App. D.C., 515 A.2d 1128 (1986).

Cited in *Jones v. Jones*, 72 F.2d 829 (D.C. Cir. 1934); *Rousey v. Rousey*, App. D.C., 528 A.2d 416 (1987); *de la Croix de Lafayette v. de la Croix de Lafayette*, 117 WLR 2133 (Super. Ct. 1989); *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991); *Johnson v. United States*, App. D.C., 616 A.2d 1216 (1992), cert. denied, 507 U.S. 996, 113 S. Ct. 1611, 123 L. Ed. 2d 172 (1993); *Roberts & Lloyd, Inc. v. Zyblut*, App. D.C., 691 A.2d 635 (1997).

CHAPTER 3. UNIFORM SUPPORT.

Sec.

30-301 — 30-326. [Repealed].

§§ 30-301 to 30-326. Purposes; effective date; definitions; existing remedies preserved; extent of duties of support; remedies of a state furnishing support or institutional care; commencement of proceedings; jurisdiction of Superior Court; complaint; verification; contents; attachments; representation of plaintiff by Corporation Counsel or private counsel; complaint on behalf of minor dependent; duty of Court when District is initiating state; fees and costs to accompany complaint; waiver of payment; flight of defendant from jurisdiction of responding state; duties of Director of Department of Human Services; duty of Court when District is responding state; orders of Court on finding duty of support; copies of orders to be transmitted to initiating state; duties of Court as to receipt and disbursement of payments; husband and wife as witnesses; crediting of payments under support orders; duty to support illegitimate child; effect of participation in proceedings; right of appeal; severability; appropriations; registration of foreign support order; effect of foreign support order.

Repealed. February 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.

Cross references. — As to Child Support Enforcement, see § 30-501 et seq.

As to interstate family support, see § 30-341.1 et seq.

As to uniform child custody proceedings, see § 16-4501 et seq.

Legislative history of Law 11-81. — Law 11-81, the “Uniform Interstate Family Support Act of 1995,” was introduced in Council and

assigned Bill No. 11-169, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-157 and transmitted to both Houses of Congress for its review. D.C. Law 11-81 became effective on February 9, 1996.

CHAPTER 3A. INTERSTATE FAMILY SUPPORT.

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Editor's note. — The cases appearing in the notes to this chapter were decided under former statutes in effect prior to the adoption of the Uniform Interstate Family Support Act of 1995.

These earlier cases have been moved to pertinent sections of this chapter where they may be useful in interpreting the current statutes.

Subchapter I. General Provisions.

§ 30-341.1. Definitions.

For the purposes of this chapter, the term:

(1) "Child" means an individual, whether over or under the age of majority, who is, or is alleged to be, owed a duty of support by the individual's parent or who is, or is alleged to be, the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "District" means the District of Columbia.

(4) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) "Family Division" means the Family Division of the Superior Court of the District of Columbia.

(6) "Home state" means the state in which a child lived with a parent, or a person acting as parent, for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support, and, if a child is less than 6 months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month or other period.

(7) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of the District.

(8) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other holder, as defined in § 30-501(9), to withhold support from the income of the obligor.

(9) "Initiating state" means a state in which a proceeding under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state.

(10) "Initiating tribunal" means the authorized tribunal in an initiating state.

(11) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(12) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(13) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(14) "Mayor" means the Mayor of the District of Columbia.

(15) “Obligee” means:

(A) An individual to whom a duty of support is, or is alleged to be, owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(B) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(C) An individual seeking a judgment determining parentage of the individual’s child.

(16) “Obligor” means an individual, or the estate of a decedent:

(A) Who owes, or is alleged to owe, a duty of support;

(B) Who is alleged, but has not been adjudicated, to be a parent of a child; or

(C) Who is liable under a support order.

(17) “Register” means to file a support order or judgment determining parentage in the Family Division.

(18) “Registering tribunal” means a tribunal in which a support order is registered.

(19) “Responding state” means a state to which a proceeding is forwarded under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) “Responding tribunal” means the authorized tribunal in a responding state.

(21) “Spousal support order” means a support order for a spouse or former spouse of the obligor.

(22) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term “state” includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter.

(23) “Support enforcement agency” means a public official or agency authorized to seek:

(A) Enforcement of support orders or laws relating to the duty of support;

(B) Establishment or modification of child support;

(C) Determination of parentage; or

(D) To locate obligors or their assets.

(24) “Support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney’s fees, and other relief.

(25) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage. (Feb. 9, 1996, D.C. Law 11-81, § 101, 42 DCR 6748.)

Cross references. — As to uniform child custody jurisdiction and marital or parent and child long-arm jurisdiction, see Chapter 45 of Title 16.

Temporary amendment of section. — Section 2(a) of D.C. Law 12-(Act 12-267) amended (9), (19), and (22) to read as follows:

“For the purposes of this chapter, the term:

“(9) “Initiating state” means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this act or a law or procedure substantially similar to this act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Enforcement of Support Act.

“(19) “Responding state” means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this act or a law or procedure substantially similar to this act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

“(22) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term “state” includes:

“(A) An Indian tribe; and

“(B) A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this act, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.”

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — Law 11-81, the “Uniform Interstate Family Support Act of 1995,” was introduced in Council and assigned Bill No. 11-169, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-157 and transmitted to both Houses of Congress for its review. D.C. Law 11-81 became effective on February 9, 1996.

References in text. — The Uniform Reciprocal Enforcement of Support Act and the Revised Uniform Reciprocal Enforcement of Support Act, referred to in (9) and (19), are model acts that have been adopted by several states.

“Duty of support” does not encompass arrearages. — Although the 1968 Model Act for the Uniform Reciprocal Enforcement of Support Act expressly provides that a duty of support includes the duty to pay arrearages, the District of Columbia has never adopted this revision, and there is nothing in the definition of the “duty of support” encompassing arrearages. *Schlecht v. Schlecht*, App. D.C., 387 A.2d 575 (1978).

Duty of support incident to divorce proceeding. — Although a couple settled their joint property rights and obligations prior to receiving a divorce decree from a Colorado court, the duty of support imposed by that decree was incident to the divorce proceeding and hence enforceable under the Uniform Support Act. *Schlecht v. Schlecht*, App. D.C., 387 A.2d 575 (1978).

District required to make independent determination of duty of support. — Under the Uniform Reciprocal Enforcement of Support Act, the District of Columbia, as the “responding state” is required to make an independent determination of whether appellant owes a duty of support to appellee; that determination is to be made pursuant to the law of any state in which the defendant was present during the period for which support is sought. *Rittenhouse v. Rittenhouse*, App. D.C., 461 A.2d 465 (1983).

Effect of mother’s desertion. — A mother’s alleged desertion of the father does not relieve him from obligations of supporting their minor children. *Edmonds v. Edmonds*, App. D.C., 146 A.2d 774 (1958).

Husband not obliged to provide child support. — Since the husband did not intend that an in loco parentis relation should continue during separation as to child of wife by her former marriage, he is not obliged to provide for the child’s support. *Jackson v. Jackson*, App. D.C., 278 A.2d 114 (1971).

When emancipation of a child is based upon some condition other than the age of majority, e.g., marriage of the child, there is no authority to modify or remit payments that became due after the child was emancipated and before the motion was filed. *Nix v. Watson*, 120 WLR 653 (Super. Ct. 1991).

Enforcement of child support and alimony order not based on prior judgment.

— Although a Maryland court order for child support and alimony was not enforceable in the District under the full faith and credit clause of the Constitution due to the potentiality under Maryland law for modification or cancellation, it was enforceable under the Uniform Support Act, the basis of which is not a prior judgment but rather the duty to support. *Schlecht v. Schlecht*, App. D.C., 387 A.2d 575 (1978).

District determination of support owed under chapter. — When a mother's petition in a reciprocal enforcement of support proceeding was forwarded to the District that jurisdiction had to determine under its local statute whether the father owed duty of support and, if

so, the amount he should be required to pay. *Prager v. Smith*, App. D.C., 195 A.2d 257 (1963).

Foreign support order. — A foreign support order may give rise to a duty of support, but does not compel a responding state to award the same level of support. *Nix v. Watson*, 120 WLR 653 (Super. Ct. 1991).

Judgment for additional support does not conflict with foreign divorce decree. — Judgment, under this chapter, requiring the husband to make additional support payments until child reached age 18, was not in conflict with doctrines of *res judicata* or full faith and credit regarding Michigan divorce decree which required support payments only until age 17. *Howze v. Howze*, App. D.C., 225 A.2d 477, appeal dismissed, 385 F.2d 986 (D.C. Cir. 1967).

§ 30-341.2. Tribunal of the District.

The Family Division is the tribunal of the District. (Feb. 9, 1996, D.C. Law 11-81, § 102, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Continuing jurisdiction. — Trial court had jurisdiction to consider ex-wife's motion to reduce arrearages to judgment even though the court in the original (divorce) action did not undertake to adjudicate any issue as to support or maintenance and the final order was silent as to support and maintenance. *Clark v. Clark*, App. D.C., 485 A.2d 621 (1984).

Statute of limitations period of § 16-2342 is not applicable to Uniform Reciprocal Enforcement of Support Act petitions. *Harris v. Kinard*, App. D.C., 443 A.2d 25 (1982).

Husband has the duty to support his wife after they had separated, in absence of proof that the separation was due to her misconduct. *Novak v. Novak*, App. D.C., 190 A.2d 266 (1963).

Violation of voidable support order. — Although the trial court may have erred in

entering a support order greater in scope than the support obligation under the parties' separation agreement (although no one specifically called the agreement to the court's attention) and to that extent issued a voidable order, the court did not act beyond its power and the defendant was not justified in complying with the parties' separation agreement in violation of the unchallenged support order. *Kammerman v. Kammerman*, App. D.C., 543 A.2d 794 (1988).

Authority to award attorney's fees. — In a proceeding under this chapter, by a wife, residing in Maryland, for an order requiring the husband, a resident of the District of Columbia, to support children, the Family Division of the Superior Court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. *Britt v. Britt*, App. D.C., 153 A.2d 644 (1959).

§ 30-341.3. Remedies cumulative.

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law. (Feb. 9, 1996, D.C. Law 11-81, § 103, 42 DCR 6748.)

Cross references. — As to interception of District income tax refunds of individuals in arrears in court-ordered child support payments, see § 47-1812.11.

Legislative history of Law 11-81. — See note to § 30-341.1.

Later action not precluded. — Award for separate maintenance and support for minor

children obtained under this chapter does not preclude later statutory action for maintenance and support. *Figliozzi v. Figliozzi*, App. D.C., 173 A.2d 904 (1961).

Additional support following satisfaction of divorce decree. — Under this chapter, a wife, who has obtained a foreign divorce, may petition for additional support after the divorce

decree has been fully satisfied. *Howze v. Howze*, App. D.C., 225 A.2d 477, appeal dismissed, 385 F.2d 986 (D.C. Cir. 1967).

Maryland order enforceable under Uniform Act but not under full faith and credit. — Although a Maryland court order for child support and alimony would not be enforceable in the District under the full faith and

credit clause of the Constitution due to the potentiality under Maryland law for modification or cancellation, it was enforceable under the Uniform Support Act, the basis of which is not a prior judgment but rather the duty to support. *Schlecht v. Schlecht*, App. D.C., 387 A.2d 575 (1978).

Subchapter II. Jurisdiction.

Subpart A. Extended Personal Jurisdiction.

§ 30-342.1. Bases for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, the Family Division may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator, if:

- (1) The individual is personally served with notice within the District;
- (2) The individual submits to the jurisdiction of the District by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in the District;
- (4) The individual resided in the District and provided prenatal expenses or support for the child;
- (5) The child resides in the District as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in the District and the child may have been conceived by that act of intercourse; or
- (7) There is any other basis consistent with the laws of the District and the Constitution of the United States for the exercise of personal jurisdiction. (Feb. 9, 1996, D.C. Law 11-81, § 201, 42 DCR 6748.)

Section references. — This section is referred to in § 30-342.2.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-342.2. Procedure when exercising jurisdiction over nonresident.

The Family Division, if it is exercising personal jurisdiction over a nonresident under § 30-342.1, may apply § 30-343.15 (special rules of evidence and procedure) to receive evidence from another state, and § 30-343.17 (assistance with discovery) to obtain discovery through a tribunal of another state. In all other respects, subchapters III through VII of this chapter do not apply and the tribunal shall apply the procedural and substantive law of the District, including the rules on choice of law other than those established by this chapter. (Feb. 9, 1996, D.C. Law 11-81, § 202, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Subpart B. Proceedings Involving 2 or More States.

§ 30-342.3. Initiating and responding tribunal of the District.

Under this chapter, the Family Division may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state. (Feb. 9, 1996, D.C. Law 11-81, § 203, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Filing and registration of foreign support order. — Where District of Columbia acted as initiating state by filing complaint for reciprocal support on behalf of plaintiff residing in District, and order of support was obtained in Maryland, where defendant resided, and residence of the parties subsequently reversed, and plaintiff filed motion for contempt and

increased child support in Maryland based on order of support, compliance with this section or its Maryland equivalent constituted filing and registration in the District under former § 30-325(a) sufficient to authorize enforcement under former § 30-326(a), giving Superior Court jurisdiction over Maryland support order, including modification and enforcement by contempt. *District of Columbia ex rel. Padgett v. Timmons*, 118 WLR 145 (Super. Ct. 1990).

§ 30-342.4. Simultaneous proceedings in another state.

(a) A tribunal of the District may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state, but only if:

(1) The petition or comparable pleading in the District is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(2) The contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) If relevant, the District is the home state of the child.

(b) A tribunal of the District may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in the District for filing a responsive pleading challenging the exercise of jurisdiction by the District;

(2) The contesting party timely challenges the exercise of jurisdiction in the District; and

(3) If relevant, the other state is the home state of the child. (Feb. 9, 1996, D.C. Law 11-81, § 204, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-342.5. Continuing, exclusive jurisdiction.

(a) A tribunal of the District issuing a support order consistent with the law of the District has continuing, exclusive jurisdiction over a child support order:

(1) As long as the District remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Until each individual party has filed written consent with the tribunal of the District for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of the District issuing a child support order consistent with the law of the District may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

(c) If a child support order of the District is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of the District loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in the District, and may only:

(1) Enforce the order that was modified as to amounts accruing before the modification;

(2) Enforce nonmodifiable aspects of that order; and

(3) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of the District shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of the District issuing a support order consistent with the law of the District has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of the District may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state. (Feb. 9, 1996, D.C. Law 11-81, § 205, 42 DCR 6748.)

Temporary amendment of section. — Section 2(b) of D.C. Law 12-(Act 12-267) amended (a)(2) so as to read as follows:

“(a) A tribunal of the District issuing a support order consistent with the law of the District has continuing, exclusive jurisdiction over a child support order:

“(2) Until all of the parties who are individuals have filed written consent with the tribunal of the District for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.”

Section 4 of D.C. Law 12-(Act 12-267) pro-

vided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-342.6. Enforcement and modification of support order by tribunal having continuing jurisdiction.

(a) A tribunal of the District may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of the District having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply § 30-343.15 (special rules of evidence and procedure) to receive evidence from another state and § 30-343.17 (assistance with discovery) to obtain discovery through a tribunal of another state.

(c) A tribunal of the District which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state. (Feb. 9, 1996, D.C. Law 11-81, § 206, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Subpart C. Reconciliation With Orders of Other States.

§ 30-342.7. Recognition of child support orders.

(a) If a proceeding is brought under this chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of the District shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized;

(2) If 2 or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal must be recognized;

(3) If 2 or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized; and

(4) If 2 or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of the District may issue a child support order, which must be recognized.

(b) The tribunal that has issued an order recognized under subsection (a) of this section is the tribunal having continuing, exclusive jurisdiction. (Feb. 9, 1996, D.C. Law 11-81, § 207, 42 DCR 6748.)

Temporary amendment of section. — Section 2(c) of D.C. Law 12-(Act 12-267) amended this section to read as follows:

“§ 30-342.7. Recognition of controlling child support order.

“(a) If a proceeding is brought under this act and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

“(b) If a proceeding is brought under this act, and 2 or more child support orders have been issued by tribunals of the District or another state with regard to the same obligor and child, a tribunal of the District shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

“(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this act, the order of that tribunal controls and must be so recognized.

“(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this act, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

“(3) If none of the tribunals would have continuing, exclusive jurisdiction under this act, the tribunal of the District having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

“(c) If 2 or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in the District, a party may request a tribunal of the District to determine which order controls and must be so recognized under subsection (b) of this section. The request must be accompa-

nied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

“(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under section 205.

“(e) A tribunal of the District which determines by order the identity of the controlling order under subsection (b)(1) or (2) of this section or which issues a new controlling order under subsection (b)(3) of this section shall state in that order the basis upon which the tribunal made its determination.

“(f) Within 30 days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.”

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-342.8. Multiple child support orders for 2 or more obligees.

In responding to multiple registrations or petitions for enforcement of 2 or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of the District shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of the District. (Feb. 9, 1996, D.C. Law 11-81, § 208, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-342.9. Credit for payments.

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of the District. (Feb. 9, 1996, D.C. Law 11-81, § 209, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Subchapter III. Civil Provisions of General Application.

§ 30-343.1. Proceedings available under this chapter.

(a) Except as otherwise provided in this chapter, this subchapter applies to all proceedings under this chapter.

(b) This chapter provides for the following proceedings:

(1) Establishment of an order for spousal support or child support pursuant to subchapter IV of this chapter;

(2) Enforcement of a support order and income-withholding order of another state without registration pursuant to subchapter V of this chapter;

(3) Registration of an order for spousal support or child support of another state for enforcement pursuant to subchapter VI of this chapter;

(4) Modification of an order for child support or spousal support issued by a tribunal of the District pursuant to subpart B of subchapter II of this chapter;

(5) Registration of an order for child support of another state for modification pursuant to subchapter VI of this chapter;

(6) Determination of parentage pursuant to subchapter VII of this chapter; and

(7) Assertion of jurisdiction over nonresidents pursuant to subpart A of subchapter II of this chapter.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent. (Feb. 9, 1996, D.C. Law 11-81, § 301, 42 DCR 6748.)

Section references. — This section is referred to in § 30-343.5.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.2. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of, or for the benefit of, the minor's child. (Feb. 9, 1996, D.C. Law 11-81, § 302, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Support proceedings may be instituted regardless of custody decree. — A person may institute proceedings for a minor for support under this chapter, regardless of fact that a decree, granting custody to another, is outstanding. *Cobbe v. Cobbe*, App. D.C., 163 A.2d 333 (1960).

Grandmother's standing unchallenged.

— Mother, from whom support for child was sought, could not challenge standing of grandmother, who had been granted custody of child under a preliminary order of court, to initiate the support proceedings. *Watson v. Dreadin*, App. D.C., 309 A.2d 493 (1973), cert. denied, 415 U.S. 959, 94 S. Ct. 1488, 39 L. Ed. 2d 574 (1974).

§ 30-343.3. Application of law of the District.

Except as otherwise provided by this chapter, a responding tribunal of the District shall:

(1) Apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in the District and may exercise all powers and provide all remedies available in those proceedings; and

(2) Determine the duty of support and the amount payable in accordance with the law and support guidelines of the District. (Feb. 9, 1996, D.C. Law 11-81, § 303, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.4. Duties of initiating tribunal.

Upon the filing of a petition authorized by this chapter, an initiating tribunal of the District shall forward 3 copies of the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged. (Feb. 9, 1996, D.C. Law 11-81, § 304, 42 DCR 6748.)

Temporary amendment of section. — Section 2(d) of D.C. Law 12-(Act 12-267) amended this section so as to read as follows:

“(a) Upon the filing of a petition authorized by this chapter, an initiating tribunal of the District shall forward 3 copies of the petition and its accompanying documents:

“(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

“(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

“(b) If a responding state has not enacted this act, or a law or procedure substantially similar to this act, a tribunal of the District may issue a certificate or other document and make find-

ings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.”

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.5. Duties and powers of responding tribunal.

(a) When a responding tribunal of the District receives a petition or comparable pleading from an initiating tribunal or directly pursuant to § 30-343.1(c), it shall cause the petition or pleading to be filed and notify the petitioner by first-class mail as to where and when it was filed.

(b) A responding tribunal of the District, to the extent otherwise authorized by law, may do one or more of the following:

- (1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
- (2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (3) Order income withholding;
- (4) Determine the amount of any arrearages and specify a method of payment;
- (5) Enforce orders by civil or criminal contempt, or both;
- (6) Set aside property for satisfaction of the support order;
- (7) Place liens and order execution on the obligor's property;
- (8) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
- (9) Issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;
- (10) Order the obligor to seek appropriate employment by specified methods;
- (11) Award reasonable attorney's fees and other fees and costs; and
- (12) Grant any other available remedy.

(c) A responding tribunal of the District shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of the District may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of the District issues an order under this chapter, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any. (Feb. 9, 1996, D.C. Law 11-81, § 305, 42 DCR 6748.)

Section references. — This section is referred to in § 30-344.1.

Temporary amendment of section. — Section 2(e) of D.C. Law 12-(Act 12-267) amended (a) and (e) so as to read as follows:

“(a) When a responding tribunal of the District receives a petition or comparable pleading from an initiating tribunal or directly pursuant

to § 30-343.1(c), it shall cause the petition or pleading to be filed and notify the petitioner as to where and when it was filed.

“(e) If a responding tribunal of the District issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner

and the respondent and to the initiating tribunal, if any."

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(e) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

Due process not denied. — This chapter did not deny the mother from whom support was sought due process even if mother had not been given notice of initiating proceeding where the mother was provided with notice of the proceeding in the responding court and was given opportunity to be heard in the responding court. *Watson v. Dreadin*, App. D.C., 309 A.2d 493 (1973), cert. denied, 415 U.S. 959, 94 S. Ct. 1488, 39 L. Ed. 2d 574 (1974).

Responding state must find duty of support. — The responding state in a Uniform Reciprocal Enforcement of Support Act proceeding must, de novo, find a duty of support and only then determine the extent of liability. *Harris v. Kinard*, App. D.C., 443 A.2d 25 (1982).

Amount court in responding jurisdiction may order respondent to pay. — The court in a responding jurisdiction may order the respondent to pay the amount certified by the initiating jurisdiction or it may select an amount that is either lower or higher than the certified need. *Fox v. Fox*, 110 WLR 1097 (Super. Ct. 1982).

Amount of alimony set by D.C. Court when acting as responding court can be less than the amount set by initiating court. *Patterson v. Patterson*, 112 WLR 2329 (Super. Ct. 1984).

Payments made as of date petition filed. — Where respondent failed to prove that he did not have a duty to pay alimony as of the date the Uniform Reciprocal Enforcement of Support Act (URESA) petition was filed in the initiating state, the alimony payments are to be

made as of that date. *Patterson v. Patterson*, 112 WLR 2329 (Super. Ct. 1984).

Preference to legitimate children. — Children who are the result of a marital relationship are entitled to support from their father before and in preference to those born illegitimately. *Jefferson v. Jefferson*, App. D.C., 192 A.2d 813 (1963); *Mitchell v. Mitchell*, App. D.C., 257 A.2d 496 (1969), aff'd, 445 F.2d 722 (D.C. Cir. 1971).

Retroactive child support. — Retroactive child support awards must be available to children born in and out of wedlock under the Uniform Reciprocal Enforcement of Support Act. *W.M. v. D.S.C.*, App. D.C., 591 A.2d 837 (1991).

No abuse of discretion in award for support. — Under this chapter, evidence did not establish that the trial court abused its discretion in awarding a sum for support of the defendant's minor child in excess of the amount requested by his former wife and recommended by the forwarding state. *Menetrez v. Menetrez*, App. D.C., 147 A.2d 772 (1959).

An award of \$60 every 2 weeks for maintenance and support of wife and children, under this chapter, was not abuse of discretion, although it would disable husband from meeting obligations to his common-law children with whom he lived. *Miner v. Miner*, App. D.C., 192 A.2d 811 (1963).

An award, pursuant to this chapter, obligating the husband, wife, father, mother or adult child of a recipient of public assistance to be responsible, according to his ability to pay, to support of the recipient, and pay \$30 every 2 weeks toward maintenance and support of his mother was not abuse of discretion. *Groover v. Essex County Welfare Bd.*, App. D.C., 264 A.2d 143 (1970).

Payment of opposing party's attorney's fees. — Factors to be considered in deciding whether a party in a Uniform Reciprocal Enforcement of Support Act (URESA) action should be ordered to pay all or any part of the opposing party's attorney's fees are the same factors applicable in divorce actions, including: (1) The ability of the party to pay, (2) the quality and nature of the services provided, (3) the necessity for such services, and (4) the results obtained from the services. *Patterson v. Patterson*, 112 WLR 2329 (Super. Ct. 1984).

§ 30-343.6. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of the District, it shall forward the pleading and accompanying documents to an appropriate tribunal in the District or another state and notify the petitioner by first-class mail as to where and when the pleading was sent. (Feb. 9, 1996, D.C. Law 11-81, § 306, 42 DCR 6748.)

Temporary amendment of section. — Section 2(f) of D.C. Law 12-(Act 12-267) amended this section so as to read as follows:

"If a petition or comparable pleading is received by an inappropriate tribunal of the District, it shall forward the pleading and accompanying documents to an appropriate tribunal in the District or another state and notify the petitioner as to where and when the pleading was sent."

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(f) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.7. Duties of support enforcement agency.

(a) A support enforcement agency of the District, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) Take all steps necessary to enable an appropriate tribunal in the District or another state to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first-class mail to the petitioner;

(5) Within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first-class mail to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency. (Feb. 9, 1996, D.C. Law 11-81, § 307, 42 DCR 6748.)

Temporary amendment of section. — Section 2(g) of D.C. Law 12-(Act 12-267) amended (b)(4) and (b)(5) to read as follows:

"(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

"(4) Within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

"(5) Within 5 days, exclusive of Saturdays,

Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication mail to the petitioner; and"

Temporary addition of section. — Section 2(h) of D.C. Law 12-(Act 12-267) added a § 30-343.7a to read as follows:

"§ 30-343.7a. Duty of the Mayor.

"If the Mayor determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Mayor may order the agency to perform its duties under this act or may provide those services directly to the individual."

Section 4 of D.C. Law 12-(Act 12-267) pro-

vided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(g) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary addition of § 30-343.7a, see § 2(h) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.8. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter. (Feb. 9, 1996, D.C. Law 11-81, § 308, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.9. Duties of Mayor.

(a) The Mayor, or the Mayor's designee, is the state information agency under this chapter.

(b) The state information agency shall:

(1) Compile and maintain a current list, including addresses, of the tribunals in the District which have jurisdiction under this chapter and any support enforcement agencies in the District and transmit a copy to the state information agency of every other state;

(2) Maintain a register of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the place in the District in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(4) Obtain information concerning the location of the obligor and the obligor's property within the District not exempt from execution by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security. (Feb. 9, 1996, D.C. Law 11-81, § 309, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.10. Pleadings and accompanying documents.

(a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the

petition. Unless otherwise ordered under § 30-343.11 (nondisclosure of information in exceptional circumstances), the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency. (Feb. 9, 1996, D.C. Law 11-81, § 310, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.11. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter. (Feb. 9, 1996, D.C. Law 11-81, § 311, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.12. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under subchapter VI of this chapter (enforcement and modification of support order after registration), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change. (Feb. 9, 1996, D.C. Law 11-81, § 312, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.13. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in the District to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in the District to participate in the proceeding. (Feb. 9, 1996, D.C. Law 11-81, § 313, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.14. Nonparentage as defense.

A party whose parentage of a child has been previously determined by, or pursuant to, law may not plead nonparentage as a defense to a proceeding under this chapter. (Feb. 9, 1996, D.C. Law 11-81, § 314, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.15. Special rules of evidence and procedure.

(a) The physical presence of the petitioner in a responding tribunal of the District is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified petition, affidavit, or document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of the District by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of the District may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of the District shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter. (Feb. 9, 1996, D.C. Law 11-81, § 315, 42 DCR 6748.)

Section references. — This section is referred to in §§ 30-342.2 and 30-342.6.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.16. Communications between tribunals.

A tribunal of the District may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of the District may furnish similar information by similar means to a tribunal of another state. (Feb. 9, 1996, D.C. Law 11-81, § 316, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.17. Assistance with discovery.

A tribunal of the District may:

(1) Request a tribunal of another state to assist in obtaining discovery; and

(2) Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state. (Feb. 9, 1996, D.C. Law 11-81, § 317, 42 DCR 6748.)

Section references. — This section is referred to in §§ 30-342.2 and 30-342.6.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-343.18. Receipt and disbursement of payments.

A support enforcement agency or tribunal of the District shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received. (Feb. 9, 1996, D.C. Law 11-81, § 318, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Subchapter IV. Establishment of Support Order.

§ 30-344.1. Petition to establish support order.

(a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of the District may issue a support order if:

(1) The individual seeking the order resides in another state; or

(2) The support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if:

(1) The respondent has signed a verified statement acknowledging parentage;

(2) The respondent has been determined by, or pursuant to, law to be the parent; or

(3) There is other clear and convincing evidence that the respondent is the child's parent.

(c) Upon finding, after notice and an opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 30-343.5 (duties and powers of responding tribunal). (Feb. 9, 1996, D.C. Law 11-81, § 401, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Subchapter V. Direct Enforcement of Order of Another State Without Registration.

§ 30-345.1. Recognition of income-withholding order of another state.

(a) An income-withholding order issued in another state may be sent by first-class mail to the person or entity defined as the obligor's employer or holder under § 30-501 *et seq.*, without first filing a petition or comparable pleading or registering the order with a tribunal of the District. Upon receipt of the order, the employer or holder shall:

(1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of the District;

(2) Immediately provide a copy of the order to the obligor; and

(3) Distribute the funds as directed in the withholding order.

(b) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of the District. Section 30-346.4 (choice of law) applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:

(1) The person or agency designated to receive payments in the income-withholding order; or

(2) If no person or agency is designated, the obligee. (Feb. 9, 1996, D.C. Law 11-81, § 501, 42 DCR 6748.)

Temporary amendment of subchapter heading. — Section 2(i) of D.C. Law 12-(Act 12-267) amended the subchapter heading to read as follows:

“Subchapter 5. Enforcement of order of another state without registration.”

Temporary amendment of section. — Section 2(i) of D.C. Law 12-(Act 12-267) amended this section to read as follows:

“§ 30-345.1. Employers’s receipt of income-withholding order of another state.

“An income-withholding order issued in another state may be sent to the person or entity defined as the obligor’s employer under chapter 5 of title 30 without first filing a petition or comparable pleading or registering the order with a tribunal of the District.”

Section 4 of D.C. Law 12-(Act 12-267) pro-

vided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of subchapter, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-345.2. Administrative enforcement of orders.

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of the District.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of the District to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter. (Feb. 9, 1996, D.C. Law 11-81, § 502, 42 DCR 6748.)

Temporary amendment of section. — Section 2(i) of D.C. Law 12-(Act 12-267) renumbered this section as § 30-345.7.

Temporary addition of sections. — Section 2(i) of D.C. Law 12-(Act 12-267) added new §§ 30-345.2 to 30-345.6 to read as follows:

“§ 30-345.2. Employer’s compliance with income-withholding order of another state.

“(a) Upon receipt of an income-withholding order, the obligor’s employer shall immediately provide a copy of the order to the obligor.

“(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of the District.

“(c) Except as otherwise provided in subsection (d) of this section and § 30-345.3, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

“(1) The duration and amount of periodic payments of current child support stated as a sum certain;

“(2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;

“(3) Medical support, whether in the form of periodic cash payment stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor’s employment;

“(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee’s attorney stated as sums certain; and

“(5) The amount of periodic payments of arrearages and interest on arrearages stated as sums certain.

“(d) An employer shall comply with the law of the state of the obligor’s principal place of

employment for withholding from income with respect to:

"(1) The employer's fee for processing an income-withholding order;

"(2) The maximum amount permitted to be withheld from the obligor's income; and

"(3) The times within which the employer must implement the withholding order and forward the child support payment."

"§ 30-345.3. Compliance with multiple income-withholding orders.

"If an obligor's employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees."

"§ 30-345.4. Immunity from civil liability.

"An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income."

"§ 30-345.5. Penalties for noncompliance.

"An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of the District."

"§ 30-345.6. Contest by obligor.

"(a) An obligor may contest the validity or

enforcement of an income-withholding order issued in another state and received directly by an employer in the District in the same manner as if the order had been issued by a tribunal of the District. Section 30-346.4 applies to the contest.

"(b) The obligor shall give notice of the contest to:

"(1) A support enforcement agency providing services to the obligee;

"(2) Each employer that has directly received an income-withholding order; and

"(3) The person or agency designated to receive payments in the income-withholding order or, if no person or agency is designated, to the obligee."

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary addition of §§ 30-345.3 to 30-345.7, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

Subchapter VI. Enforcement and modification of support order after registration.

Subpart A. Registration and Enforcement of Support Order.

§ 30-346.1. Registration of order for enforcement.

A support order or an income-withholding order issued by a tribunal of another state may be registered in the District for enforcement. (Feb. 9, 1996, D.C. Law 11-81, § 601, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Jurisdiction. — The Superior Court had the jurisdiction to modify the order of modification from Texas, where the foreign support order was registered, giving it the same legal force and effect of a support order entered by the Superior Court itself. R.M.N. v. M.R.N., 119 WLR 1985 (Super. Ct. 1991).

Filing and registration of foreign support order. — Where District of Columbia

acted as initiating state by filing complaint for reciprocal support on behalf of plaintiff residing in District, and order of support was obtained in Maryland, where defendant resided, and residence of the parties subsequently reversed, and plaintiff filed motion for contempt and increased child support in Maryland based on order of support, compliance with § 30-316 or its Maryland equivalent constituted filing and registration in the District under subsection (a) sufficient to authorize enforcement under § 30-

326(a), giving Superior Court jurisdiction over Maryland support order, including modification and enforcement by contempt. District of Co-

lumbia, ex rel. Padgett v. Timmons, 118 WLR 145 (Super. Ct. 1990).

§ 30-346.2. Procedure to register order for enforcement.

(a) A support order or income-withholding order of another state may be registered in the District by sending the following documents and information to the Superior Court of the District of Columbia:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(3) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:

(A) The obligor's address and social security number;

(B) The name and address of the obligor's employer and any other source of income of the obligor; and

(C) A description and the location of property of the obligor in the District not exempt from execution; and

(5) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of the District may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought. (Feb. 9, 1996, D.C. Law 11-81, § 602, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-346.3. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of the District.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of the District.

(c) Except as otherwise provided in this subchapter, a tribunal of the District shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction. (Feb. 9, 1996, D.C. Law 11-81, § 603, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-346.4. Choice of law.

(a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for arrearages, the statute of limitation under the laws of the District or of the issuing state, whichever is longer, applies. (Feb. 9, 1996, D.C. Law 11-81, § 604, 42 DCR 6748.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.7.

Legislative history of Law 11-81. — See note to § 30-341.1.

Subpart B. Contest of Validity or Enforcement.

§ 30-346.5. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of the District. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of the District;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) Of the amount of any alleged arrearages.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer or holder pursuant to § 30-501 *et seq.* (Feb. 9, 1996, D.C. Law 11-81, § 605, 42 DCR 6748.)

Temporary amendment of section. —

Section 2(j) of D.C. Law 12-(Act 12-267) amended (a) and (b)(2) so as to read as follows:

“(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

“(b) The notice must inform the nonregistering party:

“(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice;”

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(j) of the

Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-346.6. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in the District shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 30-346.7 (contest of registration or enforcement).

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail as to the date, time, and place of the hearing. (Feb. 9, 1996, D.C. Law 11-81, § 606, 42 DCR 6748.)

Temporary amendment of section. — Section 2(k) of D.C. Law 12-(Act 12-267) amended (a) and (c) so as to read as follows:

“(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in the District shall request a hearing within 20 days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 30-346.7 (contest of registration or enforcement).

“(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall

schedule the matter for hearing and give notice to the parties as to the date, time, and place of the hearing.”

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(k) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-346.7. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) The issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) The order was obtained by fraud;
- (3) The order has been vacated, suspended, or modified by a later order;

- (4) The issuing tribunal has stayed the order pending appeal;
- (5) There is a defense under the law of the District to the remedy sought;
- (6) Full or partial payment has been made; or
- (7) The statute of limitation under § 30-346.4 (choice of law) precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of the District.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order. (Feb. 9, 1996, D.C. Law 11-81, § 607, 42 DCR 6748.)

Section references. — This section is referred to in § 30-346.6.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-346.8. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. (Feb. 9, 1996, D.C. Law 11-81, § 608, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

Subpart C. Registration and Modification of Child Support Order.

§ 30-346.9. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in the District in the same manner as provided in subpart A of this subchapter if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. (Feb. 9, 1996, D.C. Law 11-81, § 609, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-346.10. Effect of registration for modification.

A tribunal of the District may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of the District, but the registered order may be

modified only if the requirements of § 30-346.11 (modification of child support order of another state) have been met. (Feb. 9, 1996, D.C. Law 11-81, § 610, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-346.11. Modification of child support order of another state.

(a) After a child support order issued in another state has been registered in the District, the responding tribunal of the District may modify that order only if, after notice and hearing, it finds that:

(1) The following requirements are met:

(A) The child, the individual obligee, and the obligor do not reside in the issuing state;

(B) A petitioner who is a nonresident of the District seeks modification; and

(C) The respondent is subject to the personal jurisdiction of the tribunal of the District; or

(2) An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of the District may modify the support order and assume continuing, exclusive jurisdiction over the order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of the District and the order may be enforced and satisfied in the same manner.

(c) A tribunal of the District may not modify any aspect of a child support order that may not be modified under the law of the issuing state.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of the District becomes the tribunal of continuing, exclusive jurisdiction.

(e) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered. (Feb. 9, 1996, D.C. Law 11-81, § 611, 42 DCR 6748.)

Section references. — This section is referred to in § 30-346.10.

Temporary amendment of section. — Section 2(l) of D.C. Law 12-(Act 12-267) amended this section to read as follows:

“(a) After a child support order issued in another state has been registered in the District, the responding tribunal of the District may modify that order only if § 30-346.13 does not apply and after notice and hearing it finds that:

“(1) The following requirements are met:

“(A) The child, the individual obligee, and the obligor do not reside in the issuing state;

“(B) A petitioner who is a nonresident of this state seeks modification; and

“(C) The respondent is subject to the personal jurisdiction of the tribunal of the District; or

“(2) The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of the District and all of the parties who are individuals have filed written consents

in the issuing tribunal for a tribunal of the District to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this act, the consent otherwise required of an individual residing in the District is not required for the tribunal to assume jurisdiction to modify the child support order.

“(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of the District and the order may be enforced and satisfied in the same manner.

“(c) A tribunal of the District may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If 2 or more tribunals have issued child support orders for the same obligor and child, the order

that controls establishes the aspects of the support order which are nonmodifiable, and must be so recognized under § 30-342.7.

“(d) On issuance of an order modifying a child support order issued in another state, a tribunal of the District becomes the tribunal having continuing, exclusive jurisdiction.”

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(l) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-346.12. Recognition of order modified in another state.

A tribunal of the District shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this chapter, and, upon request, except as otherwise provided in this chapter, shall:

- (1) Enforce the order that was modified only as to amounts accruing before the modification;
- (2) Enforce only nonmodifiable aspects of that order;
- (3) Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
- (4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement. (Feb. 9, 1996, D.C. Law 11-81, § 612, 42 DCR 6748.)

Temporary addition of sections. — Section 2(m) of D.C. Law 12-(Act 12-267) added §§ 30-346.13 and 30-346.14 to read as follows:

“§ 30-346.13. Jurisdiction to modify child support order of another state when individual parties reside in the District.

“(a) If all of the parties who are individuals reside in the District and the child does not reside in the issuing state, a tribunal of the District has jurisdiction to enforce and to modify the issuing state’s child support order in a proceeding to register that order.

“(b) A tribunal of the District exercising jurisdiction under this section shall apply the provisions of titles 1 and 2 of this title, and the procedural and substantive law of the District to the proceeding for enforcement or modification. Titles 3, 4, 5, 7, and 8 do not apply.”

“§ 30-346.14. Notice to issuing tribunal of modification.

“Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.”

Section 4 of D.C. Law 12-(Act 12-267) provided that the act shall apply as of January 1, 1998.

Section 5(b) of D.C. Law 12-(Act 12-267) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of §§ 30-346.13 and 30-346.14, see § 2(m) of the Uniform Interstate Family Support Emergency Amendment Act of 1997

(D.C. Act 12-225, December 23, 1997, 45 DCR 151).

Section 4 of D.C. Act 12-225 provided for application of the act.

Legislative history of Law 11-81. — See note to § 30-341.1.

Subchapter VII. Determination of parentage.

§ 30-347.1. Proceeding to determine parentage.

(a) A tribunal of the District may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of the District shall apply subchapter II of Chapter 23 of Title 16, and the rules of the District on choice of law. (Feb. 9, 1996, D.C. Law 11-81, § 701, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

References in text. — The Uniform Reciprocal Enforcement of Support Act and the Re-

vised Uniform Reciprocal Enforcement of Support Act, referred to in (a), are model acts that have been adopted by several states.

Subchapter VIII. Interstate Rendition.

§ 30-348.1. Grounds for rendition.

(a) For purposes of this subchapter, the term “governor” includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The Mayor may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in the District with having failed to provide for the support of an obligee; or

(2) On the demand by the governor of another state, surrender an individual found in the District who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom. (Feb. 9, 1996, D.C. Law 11-81, § 801, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

§ 30-348.2. Conditions of rendition.

(a) Before making demand that the governor of another state surrender an individual charged criminally in the District with having failed to provide for the support of an obligee, the Mayor may require a prosecutor of the District to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the Mayor surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order. (Feb. 9, 1996, D.C. Law 11-81, § 802, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

References in text. — The Uniform Reciprocal Enforcement of Support Act and the Re-

vised Uniform Reciprocal Enforcement of Support Act, referred to in (b), are model acts that have been adopted by several states.

Subchapter IX. Miscellaneous provisions.

§ 30-349.1. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. (Feb. 9, 1996, D.C. Law 11-81, § 901, 42 DCR 6748.)

Legislative history of Law 11-81. — See note to § 30-341.1.

CHAPTER 4. AGE OF MAJORITY.

Sec.

30-401. Enumerated.

§ 30-401. Enumerated.

Notwithstanding any rule of common or other law to the contrary in effect on July 22, 1976, the age of majority in the District of Columbia shall be 18 years of age, except that this chapter shall not affect any common-law or statutory right to child support. (July 22, 1976, D.C. Law 1-75, § 2, 23 DCR 1177; 1973 Ed., § 21-101 note.)

Section references. — This section is referred to in § 31-401.

Legislative history of Law 1-75. — Law 1-75 was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

For support purposes, person is child until age 21. — This section provides that notwithstanding other provisions of the D.C. Code making a person an adult at age 18, for purposes of child support, a person is considered a child until age 21. *Butler v. Butler*, App. D.C., 496 A.2d 621 (1985).

The laws of the District of Columbia extend the duty to support one's child until the child reaches the age of 21. *Nix v. Watson*, 120 WLR 653 (Super. Ct. 1991).

Applicability of age of majority for child support purposes to nonresidents. — Employment of parent in the District of Columbia, and his presence here because of such employment, was not enough to extend his child support obligation until his child reached her 21st birthday, when the law of the jurisdiction which established the support obligation would have permitted its termination at the 18th birthday, and the law of the jurisdiction where the dependent was domiciled would also permit the termination of any child support obligation at the 18th birthday. *Smith v. Oestreich*, 118 WLR 2481 (Super. Ct. 1990).

Opinions interpreting section do not alter common-law child support obligation.

— This section does not supersede the common-law right to child support, and opinions of the Court of Appeals should not be read as interpreting the statute to alter this common-law obligation. *Butler v. Butler*, App. D.C., 496 A.2d 621 (1985).

Parental support. — Adult child is still a minor for parental support purposes. *Lasley v. Georgetown Univ.*, 842 F. Supp. 593 (D.D.C. 1994).

For an adult child domiciled in Maryland, his parents were obligated by that state's support laws. *Lasley v. Georgetown Univ.*, 842 F. Supp. 593 (D.D.C. 1994).

Post-majority disabled children. — There exists in the District of Columbia a common law duty on the part of parents to support their post-majority physically or mentally disabled children. *Nelson v. Nelson*, App. D.C., 548 A.2d 109, cert. denied, 379 A.2d 713 (1988).

No standing to challenge section. — Defendant, not being an 18- to 21-year-old child not entitled to receive support, did not have standing to challenge this provision on the ground that it impermissibly distinguishes between 18- to 21-year-olds who marry or work full time and 18- to 21-year-olds who attend school. *Monroe v. Monroe*, 125 WLR 1081 (Super. Ct. 1997).

Cited in *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989); *Rollins v. Rollins*, App. D.C., 602 A.2d 1121 (1992).

CHAPTER 5. CHILD SUPPORT ENFORCEMENT.

Sec.

- 30-501. Definitions.
- 30-502. Findings of Council.
- 30-503. Subrogation of District; notice to caretakers.
- 30-504. Amendment of order establishing alimony, child support, or maintenance; award as money judgment.
- 30-505. Contents of order.
- 30-506. Service.
- 30-507. Enforcement by withholding.
- 30-508. Withholding.
- 30-509. Notice of intent to withhold.
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§ 30-501. Definitions.

For the purposes of this chapter, the term:

(1) "Caretaker" means a parent, relative, guardian, or other person whose needs are included in a public assistance payment for a dependent child and who is using those payments for the benefit of the dependent child.

(2) "Child support" means any payment that a responsible relative is ordered to make because of a duty of support.

(3) "Court" means the Superior Court of the District of Columbia.

(4) "Custodian" means the parent, relative, guardian, or other person with whom the dependent child resides.

(5) "Dependent child" means any child for whom the District is providing public assistance pursuant to subchapter 5 of Chapter 2 of Title 3 and whose support is required by § 16-916; or any child to whom an obligor owes a duty of support.

(6) "District" means the government of the District of Columbia.

(7) "Duty of support" means any duty of support imposed by statute or by common law; any duty of support imposed by order of the Court, decree, or judgment, whether interlocutory or final, or whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise; any duty of reimbursement imposed by law for moneys expended by the District for support, including public assistance and foster care; or any duty of support imposed by any other section of this chapter.

(8) "Earnings" means any remuneration based on employment including, but not limited to, wages, salaries, annuities, retirement benefits, unemployment compensation, and disability benefits.

(9) "Holder" means any person, firm, association, corporation, or government official whom the Mayor believes has possession of property of a responsible relative, including, but not limited to, earnings or other income of the responsible relative.

(10) "Mayor" means the Mayor of the District of Columbia or the Mayor's designee.

(11) "Obligor" means any responsible relative or person ordered to pay pursuant to any order or decision listed in § 30-507.

(12) "Other income" means any income available to an individual whether or not derived from remuneration based on employment.

(13) "Public assistance" means assistance granted under the District's Aid to Families with Dependent Children program pursuant to subchapter 5 of Chapter 2 of Title 3.

(14) "Recipient" means a dependent child and, if applicable, the caretaker for the child.

(15) "Responsible relative" means any person obligated under law for the support of a dependent child.

(16) "Withholding order" means any legal or equitable order that requires a holder to turn over earnings or other income in a specified amount to a specified payee rather than to an individual to whom the earnings or other income would otherwise be payable. (Feb. 24, 1987, D.C. Law 6-166, § 2, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-341.1, 30-345.1, and 30-346.5.

Temporary amendment of section. — Section 7(a) of D.C. Law 12-(Act 12-279) redesignated (1) as (1A); added (1), (8A), (8B); amended (13); and added (15A) to read as follows:

"For the purposes of this chapter, the term:

"(1) 'Business day' means Monday through Friday, excluding District and federal holidays.

"(1A) 'Caretaker' means a parent, relative, guardian, or other person whose needs are included in a public assistance payment for a dependent child and who is using those payments for the benefit of the dependent child.

"(8A) 'Entity' means a partnership, firm, association, corporation, sole proprietorship, company, organization, or other business, including governmental and non-profit organizations.

"(8B) 'IV-D agency' means the organizational unit of the District government, or any successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved

January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of child support orders and spousal support orders in which the spouse or former spouse is living with a child for whom the spousal support obligor also owes support.

"(13) 'Public assistance' means aid as defined by § 3-201.1(6)).

"(15A) 'Spousal support' means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child for whom the individual also owes support and that is sought, established, modified, or enforced by the IV-D agency."

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(a) of the Child Support and Welfare Reform Compliance

Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — Law 6-166, “District of Columbia Child Support Enforcement Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 8, 1986, and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

Editor’s notes. — The bracketed material was set out in (5) and (13) to update the reference following amendment.

“Custodian.” — Even though child was not living in the custodial parent’s home at the time

the request for wage withholding was made, the court recognized that many students temporarily live outside their parents’ home while attending college, and child still does reside with the custodial parents. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

“Dependent child.” — Child, now 22 years of age, is still considered to be a “dependent child” since her father still owes her a duty of support pursuant to the parties’ separation agreement. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Cited in *Edwards v. Lateef*, 116 WLR 69 (Super. Ct. 1988); *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989); *McNeil v. Reynolds*, App. D.C., 575 A.2d 270 (1990); *D.C. v. P.L.*, 118 WLR 1729 (Super. Ct. 1990); *Soto v. Gonzalez*, 120 WLR 194 (Super. Ct. 1992).

§ 30-502. Findings of Council.

The Council of the District of Columbia finds that:

(1) Dependent children shall be maintained, as completely as possible, from the resources of their parents, thereby relieving or avoiding, at least in part, the burden borne by the citizens of the District for public welfare programs.

(2) The existing remedies pertaining to the support of dependent children are to be augmented by the additional remedies mandated or recommended in the Child Support Enforcement Amendments of 1984 (42 U.S.C. § 651 et seq.).

(3) Enactment of this legislation will maximize the potential for children to receive timely, regular, and adequate support from their parents, safeguard the basic rights of all parties, and utilize the resources of the District in the most efficient manner. (Feb. 24, 1987, D.C. Law 6-166, § 3, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Short title. — See note to § 30-501.

Parents primarily responsible. — To the extent possible, a child’s parents are primarily responsible for his or her support, not the

District of Columbia. *E.K. v. C.S.*, 119 WLR 2273 (Super. Ct. 1991).

Cited in *Haymon v. Wilkerson*, App. D.C., 535 A.2d 880 (1987); *District of Columbia ex rel. K.L.H. v. Duncan*, 117 WLR 21 (Super. Ct. 1989).

§ 30-503. Subrogation of District; notice to caretakers.

(a) The District shall be subrogated to the right of the caretaker to prosecute or maintain any support action. If a Court orders support to be paid by a responsible relative, the District shall be subrogated to the right of the caretaker to receive past, present, and future payments under an order or decree, and any money judgment entered under an order or decree shall be considered to be in favor of the District.

(b) The Mayor shall inform any individual who is a caretaker on February 24, 1987, of the provisions of this chapter within 120 days after February 24, 1987. Any individual who becomes a caretaker after February 24, 1987, shall

be informed of the provisions of this chapter when the individual becomes a caretaker. (Feb. 24, 1987, D.C. Law 6-166, § 4, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

Delegation of authority pursuant to Law 6-166. — See Mayor's Order 87-273, December 10, 1987.

Cited in *Miller v. Miller*, App. D.C., 561 A.2d 1005 (1989); *District of Columbia ex rel. K.L.H. v. Duncan*, 117 WLR 21 (Super. Ct. 1989); *McNeil v. Reynolds*, App. D.C., 575 A.2d 270 (1990).

§ 30-504. Amendment of order establishing alimony, child support, or maintenance; award as money judgment.

(a) Any order requiring payment of an amount of child support, regardless of whether the amount of the child support was the subject of a voluntary agreement of the parties, may be modified upon a showing that there has been a substantial and material change in the needs of the child or the ability of the responsible relative to pay since the day on which the order was issued.

(b) An award of alimony, child support, or maintenance is a money judgment that becomes absolute, vested, and upon which execution may be taken, when it becomes due.

(c) No modification of an award of alimony, child support, or maintenance may be retroactive, except that a modification may be permitted for the period during which a petition for modification is pending. The modification may then be permitted from the date on which the opposing party was given notice of the petition for modification according to statute or court rule. (Feb. 24, 1987, D.C. Law 6-166, § 5, 33 DCR 6710; Dec. 10, 1987, D.C. Law 7-47, § 2, 34 DCR 6849.)

Section references. — This section is referred to in §§ 16-916.1, 30-345.1 and 30-346.5.

Temporary amendment of section. — Section 7(b) of D.C. Law 12-(Act 12-279) amended (a) so as to read as follows:

“(a) Any order requiring payment of an amount of child support, regardless of whether the amount of the child support was the subject of a voluntary agreement of the parties, may be modified upon a showing that there has been a substantial and material change in the needs of the child or the ability of the responsible relative to pay since the day on which the order was issued. A showing or proof of a change in circumstances shall not be required to modify a child support order that is being reviewed pursuant to § 16-916.1(o)(2).”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 7-47. — Law 7-47 was introduced in Council and assigned Bill No. 7-92, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 14, 1987, and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-80 and transmitted to both Houses of Congress for its review.

Jurisdiction. — Although both § 16-914(a) and this section allow for modification of custody and support decrees ad infinitum, these sections do not permit court to hear custody and support cases over which it has no personal jurisdiction. *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990).

Public policy favors exercise of jurisdiction where the District of Columbia is the residence of a plaintiff who sues for support of minor resident child. *Winston v. Zeitz*, 120 WLR 2581 (Super. Ct. 1992).

The Superior Court interpreted “any”

order to include an order from Maryland. *Winston v. Zeitz*, 120 WLR 2581 (Super. Ct. 1992).

Application to Texas court order. — The guideline in § 16-916.1(a), which provides, *inter alia*, that “in any case that seeks to modify an existing child support order” in which child support is appropriate, the judicial officer shall “enter a judgment in accordance with the child support guideline,” applies to a Texas court order which was not issued pursuant to the guideline or pursuant to this section, as subsection (a) of this section provides that any child support order may be modified upon a showing of a substantial and material change in circumstances. Therefore, the reference in the guideline to this section, although perhaps imprecisely formulated, was designed to bring within the ambit of § 16-916.1(o) all child support orders cognizable under subsection (a) which effectively means all child support orders. *Nevarez v. Nevarez*, App. D.C., 626 A.2d 867 (1993).

Money judgment. — The parties’ judgment of absolute divorce was a final order of the court, and as such, was enforceable according to its terms. Therefore, each unpaid child support payment became an enforceable money judgment. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Vesting of right to support. — An obligee’s right to support, whether ordered as part of a final decree or pendente lite, is vested when the payment becomes due, and cannot be abridged. *Murdock v. Huguley*, 117 WLR 613 (Super. Ct. 1989).

Since a pendente lite child support order is “child support” as defined in § 30-501(2) because it is imposed by a court order based upon interlocutory “duty of support” pursuant to § 30-501(7), an obligee’s right to support, whether ordered as part of a final decree or pendente lite, is vested when the payment becomes due and cannot be abridged. *Soto v. Gonzalez*, 120 WLR 194 (Super. Ct. 1992).

Finality of order. — Since an obligee’s rights to installment payments under a consent order are protected by the finality of that order, the liability of the non-custodial parent is limited by that order for its duration as well. *Murdock v. Huguley*, 117 WLR 613 (Super. Ct. 1989).

The obligee’s right to accrued but unpaid installments of a pendente lite support award is absolute and vested, and the order creating that right is sufficiently final to be enforceable. The obligor is protected by the same finality. *Soto v. Gonzalez*, 120 WLR 194 (Super. Ct. 1992).

Retroactive award of additional child support to the date respondent was served was appropriate on account of respondent’s

delaying tactics. *Murdock v. Huguley*, 117 WLR 613 (Super. Ct. 1989).

A permanent support order may not be retroactively modified except back to the date the opposing party was given notice of the request for modification. *Soto v. Gonzalez*, 120 WLR 194 (Super. Ct. 1992).

Temporary support orders. — Temporary support order, which came about only because of the failure to make payments pursuant to parties’ property settlement agreement, became an order of the court enforceable against the husband and served as a basis for a modification pursuant to subsection (a) of this section and § 16-916.1. Accordingly, the order fell within the scope of § 16-916.1, and therefore the trial court could have modified the amount of child support established by the parties’ separation and property agreement and enter a permanent order of child support. *Clark v. Clark*, App. D.C., 638 A.2d 667 (1994).

Existing support order required. — The provisions of subsection (a) and § 16-916.1 apply only if there was an existing child support order; such an order is a prerequisite to the trial court’s modification of the amount of child support. *Clark v. Clark*, App. D.C., 638 A.2d 667 (1994).

Factors in determining good faith nature of change in circumstances. — The good faith nature of a change in circumstances is a factor that the court considers, employing 3 factors in determining good faith: (1) The original circumstances of the change; (2) the obligor’s efforts to continue making payments; and (3) the duration of the change. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

Best interests of child. — Child support payments are for the benefit of the children, not the mother, and the children’s interest is paramount. *Nevarez v. Nevarez*, App. D.C., 626 A.2d 867 (1993).

Voluntary change in the ability to pay. — Voluntary changes in ability to pay are not material, because a voluntary change is not a change in the individual’s actual ability to pay. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991); *Lewis v. Lewis*, App. D.C., 637 A.2d 70 (1994).

Whether the original change in circumstances is voluntary or involuntary, in the absence of permanent disability, the obligor must, after a reasonable period of time, make good faith efforts to produce sufficient income to enable the obligor to make the payments. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

The father’s voluntary accumulation of obligations to various creditors, e.g., by the purchase of an expensive automobile since the mother’s filing of the motion to increase child support, did not entitle him to a reduction in modification of child support payments, for his

claimed inability to pay was self-inflicted. *Nevarez v. Nevarez*, App. D.C., 626 A.2d 867 (1993).

Evidence did not support the conclusion that the father deliberately and unreasonably pursued a different career and gave it precedence over his duty to support his children and ex-wife. *Mizrachi v. Mizrachi*, App. D.C., 683 A.2d 137 (1996).

Reliance on prior order not sufficient to bar modification. — Where father sought to continue paying child support at a level established in a Texas support decree, due to his reliance on that payment level in his financial obligations, but where he did not show that such reliance was reasonable, or that the amount ordered by the Texas court was designed to be of permanent duration in the absence of unforeseen and unforeseeable events, and where the father likewise failed to demonstrate that the application to him of a guideline routinely enforced against the generality of noncustodial parents living in this jurisdiction would “yield a patently unjust result,” fairness dictated a modification of support. *Nevarez v. Nevarez*, App. D.C., 626 A.2d 867 (1993).

Material change of circumstances found. — Respondent carried his burden of establishing a material change of circumstances and his child support obligation was permanently reduced. *Rappaport v. Galler*, 120 WLR 1037 (Super. Ct. 1992).

Application of clean hands doctrine. — Applying the clean hands doctrine to the misconduct of a custodial parent in such a way as to prevent an increase in the amount of child

support which would otherwise be justified would arguably be against public policy; however, applying the doctrine to the misconduct of a noncustodial parent to bar a reduction request would not transgress that public policy and in fact may be consistent with such a policy. *J.W. v. J.A.*, 121 WLR 449 (Super. Ct. 1993).

Claim of material change barred by clean hands doctrine. — Noncustodial parent's claim that incarceration is a substantial and material change in circumstances warranting a modification of his child support obligation was barred by the equitable clean hands doctrine. *J.W. v. J.A.*, 121 WLR 449 (Super. Ct. 1993).

Increase in noncustodial parent's ability to pay support. — An increase in the noncustodial parent's ability to pay can, by itself, constitute a material change in circumstances sufficient to justify an increase in support. *Graham v. Graham*, App. D.C., 597 A.2d 355 (1991).

Imprisonment as affecting ability to pay. — While husband shot his wife voluntarily, he did not do so with the purpose of being arrested, spending the next seven years and more in prison, and thereby reducing his income. The rule that prevents a parent from evading child support responsibility by voluntarily reducing income presupposes an ability to have maintained that income, which did not apply. *Lewis v. Lewis*, App. D.C., 637 A.2d 70 (1994).

Cited in District of Columbia, ex rel. Padgett v. Timmons, 118 WLR 145 (Super. Ct. 1990); *Davis v. Davis*, 121 WLR 1721 (Super. Ct. 1993).

§ 30-505. Contents of order.

All Court orders or decrees directing the payment of child or spousal and child support, whether they are original orders or modifications of existing orders, shall contain the following information in addition to the notice required by § 30-506:

(1) For an original support order or modification of a support order that is effective on or after January 1, 1994, notice that support payments shall be withheld from earnings or other income immediately, unless the Court finds there is good cause not to impose immediate withholding or the parties agree in writing to an alternative method of payment;

(1A) In the case of a support order that is issued or modified on or after November 1, 1990, a finding of good cause not to require immediate withholding shall be based on at least:

(A) A written explanation by the court of why immediate wage withholding would not be in the best interest of the child; and

(B) If the modification of a support order is at issue, a written explanation that there is proof of timely payment of previously ordered support obligations;

(2) Notice that if withholding commences, all payments shall be made through the Court registry and any other payments shall be considered a gift and shall not offset the duty of support ordered by the Court; and

(3) A provision that directs the absent parent to keep the IV-D Program informed of the absent parent's current employer, and whether the parent has access to health coverage at a reasonable cost and, if so, the health policy information. (Feb. 24, 1987, D.C. Law 6-166, § 6, 33 DCR 6710; July 25, 1990, D.C. Law 8-150, § 4(a), 37 DCR 3720; Mar. 16, 1995, D.C. Law 10-217, § 2(a), 41 DCR 8040; Apr. 18, 1996, D.C. Law 11-110, § 32, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-170, § 2(a), 43 DCR 4480.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Effect of amendments. — D.C. Law 11-110 validated a previously made stylistic change in (1).

D.C. Law 11-170 inserted (1A); and added (3).

Temporary amendment of section. — Section 2(a) of D.C. Law 11-148 inserted (1A); and added (3).

Section 4(b) of D.C. Law 11-148 provides that the act shall expire after 225 days of its having taken effect or on the effective date of the Child Support Enforcement Amendment Act of 1996, whichever occurs first.

Temporary amendment of section. — Section 7(c) of D.C. Law 12-(Act 12-279) rewrote (3) and added (4), (5), and (6) to read as follows:

"All Court orders or decrees directing the payment of child or spousal and child support, whether they are original orders or modifications of existing orders, shall contain the following information in addition to the notice required by § 30-506:

"(3) A provision that directs the parties to file and update with the IV-D agency (if the IV-D agency is assisting in the establishment of paternity or the establishment, modification or enforcement of support) and with the Superior Court, the information required by section 27b.

"(4) Terms providing for the payment of the child's medical expenses, whether or not health insurance is available to pay for those expenses. These terms shall include a provision directing the obligor and obligee to notify the IV-D agency, if the order is being enforced by the IV-D agency, or the Superior Court, if the order is being enforced by the Superior Court, of:

"(A) Any change in either his or her access to health insurance coverage for the child or the reasonableness of the costs of coverage; and

"(B) All health insurance policy information necessary to enroll the child in the health insurance to which the obligor or obligee has access.

"(5) Notice that if the obligor provides health insurance coverage for the child and changes to another employer that provides health care coverage, the IV-D agency or the Superior Court will notify the new employer of the health insurance coverage provision in the child support order. Receipt of the notice by the employer shall operate to enroll the child in the obligor's health plan with his new employer, unless the obligor contests the notice in accordance with rules adopted by the Mayor or the Superior Court, as appropriate.

"(6) Notice that the amount and name of the obligor and obligee of all child or spousal support obligations entered, modified, registered, or enforced in the District after the effective date of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 shall be reported to a consumer credit reporting agency, if the obligor's support obligations are over 30 days past due."

Temporary addition of § 30-505.1. — Section 7(d) of D.C. Law 12-(Act 12-279) added a § 30-505.1, to read as follows:

"§ 30-505.1. Inclusion of Social Security numbers in child or spousal support records.

"(a) The Social Security number of each individual who is party to a order of child or spousal support shall be included in the Superior Court and IV-D agency records relating to the order."

Section 16(b) of D.C. Law 12-(Act 12-279) provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(a) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and § 2(a) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

Section 4 of D.C. Act 11-304 provides for the application of the act.

Section 4 of D.C. Act 12-31 provided for application of the act.

For temporary amendment of section, see § 7(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of § 30-505.1, see § 7(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 8-150. — See note to § 30-524.1.

Legislative history of Law 10-210. — Law 10-210, the “Child Support Enforcement Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-739. The Bill was adopted on first and second readings on July 19, 1994, and October 4, 1994, respectively. Signed by the Mayor on October 21, 1994, it was assigned Act No. 10-331 and transmitted to both Houses of Congress for its review. D.C. Law 10-210 became effective on March 14, 1995.

Legislative history of Law 10-217. — Law 10-217, the “Child Support Enforcement Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-740, which was referred to the Committee on the Judiciary with comments from the Committee on Human Services. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-354 and transmitted to both Houses of Congress for its review. D.C. Law 10-217 became effective on March 16, 1995.

Legislative history of Law 11-47. — Law 11-47, the “Child Support Enforcement Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-287. The

Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 6, 1995, it was assigned Act No. 11-88 and transmitted to both Houses of Congress for its review. D.C. Law 11-47 became effective on September 20, 1995.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-148. — Law 11-148, the “Child Support Enforcement Temporary Amendment Act of 1996,” was introduced in Council and Assigned Bill No. 11-652. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 20, 1996, it was assigned Act No. 11-272 and transmitted to both Houses of Congress for its review. D. C. Law 11-148 became effective on July 20, 1996.

Legislative history of Law 11-170. — Law 11-170, the “Child Support Enforcement Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-288, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1996, and July 6, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-317 and transmitted to both Houses of Congress for its review. D.C. Law 11-170 became effective on April 9, 1997.

Cited in *In re X.B.*, App. D.C., 637 A.2d 1144 (1994).

§ 30-506. Service.

(a) In any case brought in Court under § 11-1101(1), (3), (10), or (11), involving the establishment of child support or in any case seeking to modify an existing child support order, notice shall be issued to the alleged responsible relative by the Clerk of the Family Division of the Court stating that a hearing to determine the matter of child support has been scheduled. This hearing shall be scheduled within 45 days from the date the application is filed by the Clerk.

(b) Personal service of the notice may be made in the following manner:

(1) By delivering a copy of the notice to:

(A) The responsible relative;

(B) A person of suitable age and discretion who resides at the alleged responsible relative’s dwelling house or usual place of abode;

(C) A person of suitable age and discretion at the alleged responsible relative's place of employment; or

(2) By mailing the notice to the alleged responsible relative by certified mail, return receipt requested, and also by separate first-class mail. A certified mail notice of the complaint shall be sufficient, although unclaimed or refused by the respondent, when the first-class mail notice is not returned. Service by certified mail that is unclaimed or refused and first-class mail alone shall not be a sufficient basis to permit the entry of a default order of paternity in a case where the respondent fails to file an answer or otherwise fails to respond appropriately. Delivery may be made by a competent adult with no interest in the proceedings.

(c) The notice shall include the following information:

(1) The name of the person for whom support is being claimed;

(2) A demand that the alleged responsible relative attend a hearing and the date, time, and place of the hearing;

(3) An explanation of the possible consequences of the alleged responsible relative's failure to attend the scheduled hearing;

(4) The demand that the alleged responsible relative bring to the hearing any record in the relative's possession of earnings received in the past 2 years, including receipts for earnings provided by an employer, or any wage and tax statements prepared by an employer setting forth earnings for tax purposes;

(5) Notice that the alleged responsible relative may be represented by counsel at any stage of the proceedings; and

(6) An explanation that a request for a continuance may result in the setting of interim support or the posting of collateral.

(d) The custodian shall be given a notice containing the provisions outlined in subsection (c) of this section. (Feb. 24, 1987, D.C. Law 6-166, § 7, 33 DCR 6710; Aug. 17, 1991, D.C. Law 9-39, § 4(a), 38 DCR 4970.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-505.

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 9-5. — See note to § 30-526.2.

Legislative history of Law 9-39. — See note to § 30-526.2.

Service of process to defendant's secretary gave ineffective notice. — In a paternity action, service of process under this sec-

tion, effectuated by leaving a copy of the Notice of Hearing and petition to establish paternity with a secretary at respondent's place of employment, was not valid because it was not reasonably calculated to give actual notice. *L.T. v. J.C.*, 125 WLR 1309 (Super. Ct. 1997).

Cited in *Cole v. Kinley*, 118 WLR 1001 (Super. Ct. 1990); *District of Columbia ex rel. J.A.B. v. W.R.*, 119 WLR 2261 (Super. Ct. 1991); *In re X.B.*, App. D.C., 637 A.2d 1144 (1994).

§ 30-507. Enforcement by withholding.

(a) The Court shall be the instrumentality for withholding earnings and other income under this chapter.

(a-1) For an original support order or modification of a support order that is effective on or after January 1, 1994, notice that support payments shall be withheld from earnings or other income immediately, unless the Court finds there is good cause not to impose immediate withholding or the parties agree in writing to an alternative method of payment.

(b) All Court orders or decrees directing the payment of child or spousal and child support, whether they are original orders or modifications of existing orders, shall contain the following:

(1) Notice that support payments shall be withheld from earnings or other income as provided in subsection (a-1) of this section;

(2) The name, address, and telephone number of the obligor's current employer and a provision that the obligor has a duty to notify the Court within 10 days of any change of this information;

(3) Notice that a withholding order may be changed upon motion from either party to request a reapportionment of periodic arrears payments to reflect a change in the obligor's ability to pay;

(4) In the case of a support order that is issued or modified on or after November 1, 1990, a finding of good cause not to require immediate withholding shall be based on at least:

(A) A written explanation by the court of why immediate wage withholding would not be in the best interest of the child; and

(B) If the modification of a support order is at issue, a written explanation that there is proof of timely payment of previously ordered support obligations; and

(5) A provision that directs the absent parent to keep the IV-D Program informed of whether the absent parent has access to health coverage at a reasonable cost and, if so, the health policy information.

(c) The following orders shall be enforceable by means of withholding earnings or other income:

(1) Any order for child support with an income withholding order under § 16-916, Chapter 3 of this title, or § 3-213.1;

(2) Any order for a wage garnishment or wage assignment for child support in effect on February 24, 1987, to the extent that the order does not exceed the maximum amounts permitted under 15 U.S.C. § 1673(b);

(3) Any Court order or final decree of divorce requiring the payment of child support by a parent;

(4) Any separation agreement requiring the payment of child support by a parent;

(5) Any order registered pursuant to Chapter 3 of this title;

(6) Any support order of another jurisdiction that has been docketed pursuant to § 30-522; and

(7) Any order for spousal support when it is part of a child support obligation that is being enforced under Part D of Subchapter IV of the Social Security Act (42 U.S.C. § 651 et seq.), and the spouse or former spouse is living with the child. (Feb. 24, 1987, D.C. Law 6-166, § 8, 33 DCR 6710; July 25, 1990, D.C. Law 8-150, § 4(b), 37 DCR 3720; Mar. 16, 1995, D.C. Law 10-217, § 2(b), 41 DCR 8040; Apr. 9, 1997, D.C. Law 11-170, § 2(b), 43 DCR 4480.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, 30-501, 30-509, and 30-523.

Effect of amendments. — D.C. Law 11-170 added the provisions designated as (b)(4) and (b)(5).

Temporary amendments of section. — Section 2(b) of D.C. Law 11-148 added the provisions designated as (b)(4) and (b)(5).

Section 4(b) of D.C. Law 11-148 provides that the act shall expire after 225 days of its having taken effect or on the effective date of the Child

Support Enforcement Amendment Act of 1996, whichever occurs first.

Section 7(e) of D.C. Law 12-(Act 12-279) amended (b)(4)(B), (b)(5) and added (b)(6)-(8) to read as follows:

“(b) All Court orders or decrees directing the payment of child or spousal and child support, whether they are original orders or modifications of existing orders, shall contain the following:

“(4) In the case of a support order that is issued or modified on or after November 1, 1990, a finding of good cause not to require immediate withholding shall be based on at least:

“(B) If the modification of a support order is at issue, a written explanation that there is proof of timely payment of previously ordered support obligations;

“(5) Terms providing for the payment of the child’s medical expenses, whether or not health insurance is available to pay for those expenses. These terms shall include a provision directing the obligor and obligee to notify the IV-D agency, if the order is being enforced by the IV-D agency, or the Superior Court, if the order is being enforced by the Superior Court, of:

“(A) Any change in either his or her access to health insurance coverage for the child or in the reasonableness of the costs of coverage; and

“(B) All health insurance policy information necessary to enroll the child in the health insurance to which the obligor or obligee has access;

“(6) Notice that if the obligor provides health insurance coverage for the child and changes to another employer that provides health care coverage, the IV-D agency or the Superior Court will notify the new employer of the health insurance coverage provision in the child support order; receipt of the notice by the employer from the IV-D agency shall operate to enroll the child in the obligor’s health plan with the new employer, unless the obligor contests the notice in accordance with rules adopted by the Mayor or the Superior Court, as appropriate;

“(7) Notice that the amount and name of the obligor and obligee of all child or spousal support obligations entered, modified, registered, or enforced in the District after the effective

date of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 shall be reported to a consumer credit reporting agency, if the obligor’s support obligations are over 30 days past due; and

“(8) A provision that directs the parties to file and update with the Superior Court and with the IV-D agency (if the IV-D agency is assisting in the establishment of paternity or the establishment, modification or enforcement of support) and with the Superior Court the information required by section 36 of the Child Support Enforcement Amendment Act of 1985.”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(b) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and see § 2(b) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

For temporary amendment of section, see § 7(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act 1997 (D.C. Act 12-222, December 23, 1997, 44DCR 114).

Section 4 of D.C. Act 11-304 provides for the application of the act.

Section 4 of D.C. Act 12-31 provided for application of the act.

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 8-150. — See note to § 30-524.1.

Legislative history of Law 10-210. — See note to § 30-505.

Legislative history of Law 10-217. — See note to § 30-505.

Legislative history of Law 11-47. — See note to § 30-505.

Legislative history of Law 11-148. — See note to § 30-505.

Limitation established under 15 U.S.C. § 1673. — The 55 per centum limitation established under 15 U.S.C. § 1673(b)(2) is not unreasonable. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Cited in *Rosenberg v. Rosenberg*, 116 WLR 1469 (Super. Ct. 1988).

§ 30-508. Withholding.

(a) Notwithstanding any other provision of subchapter II or III of Chapter 5

of Title 16, where a withholding is levied upon earnings or other income, the withholding shall:

- (1) Not exceed the limitations set forth under 15 U.S.C. § 1673(b);
 - (2) Be binding upon each present and future holder upon whom a copy of the notice of withholding is served until the holder is notified of its termination; and
 - (3) Have priority over any legal process under District law.
- (b) The Mayor shall establish a procedure for the prompt return to an obligor of any overpayment pursuant to § 30-527.
- (c) Notwithstanding §§ 30-509(a) and 30-510(e)(2), cases not subject to immediate withholding shall become subject to immediate withholding upon request, regardless of whether there is an arrearage, on the earliest of:
- (1) The date an absent parent requests the withholding;
 - (2) The date a custodial parent requests the withholding and the IV-D agency approves the request; or
 - (3) Any earlier date the IV-D agency may select. (Feb. 24, 1987, D.C. Law 6-166, § 9, 33 DCR 6710; Aug. 17, 1991, D.C. Law 9-39, § 4(b), 38 DCR 4970.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-511.

Temporary amendment of section. — Section 7(f) of D.C. Law 12-(Act 12-279) added (d) to read as follows:

“(d) Nothing in this act shall be construed to require a judicial or administrative hearing before initiation of withholding if there are arrearages equal to 30 days of support, except as may be required pursuant to section 11 to resolve a properly filed objection to a notice of intent to withhold.”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(f) of the

Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 9-5. — See note to § 30-526.2.

Legislative history of Law 9-39. — See note to § 30-526.2.

Delegation of authority pursuant to Law 6-166. — See Mayor’s Order 87-273, December 10, 1987.

Limitation established under 15 U.S.C. § 1673. — The 55 per centum limitation established under 15 U.S.C. § 1673(b)(2) is not unreasonable. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

§ 30-509. Notice of intent to withhold.

(a) For any order listed in § 30-507(c)(1), (2), (3), (4), or (7) where there are arrearages equal to 30 days of support payments, any caretaker, custodian, responsible relative, or the Mayor may apply to the Clerk of the Court to issue a notice of intent to withhold and the Clerk of the Court shall issue to the obligor, by certified mail, a notice of intent to withhold and shall certify the date the notice is mailed. The Mayor shall apply to the Clerk of the Court to issue a notice of intent to withhold in all child support cases in which a child support order was issued effective before October 1, 1990, and being enforced under 42 U.S.C. § 651 et seq., where there are arrearages equal to 30 days of support payments.

(b) For any order listed in § 30-507(c)(5) or (6), any caretaker, custodian, responsible relative, or agency may apply to the Clerk of the Court to issue a notice of intent to withhold upon compliance with the requirements of

§ 30-522. The Clerk of the Court shall issue to the obligor by certified mail a notice of intent to withhold and shall certify the date the notice is mailed.

(c) The notice of intent to withhold as required in subsections (a) and (b) of this section shall include the following:

(1) A statement of any arrearage that has accrued, the support obligation that is accruing, and the periodic amount required to be paid in the future;

(2) A statement that the obligor's earnings or other income shall be withheld in the amount specified in the notice;

(3) A statement that the withholding shall apply to any current and subsequent periods of employment;

(4) A statement that, unless the obligor files an objection to contest the withholding within 15 days of the date the notice was mailed to the obligor, the Clerk of the Court will notify the holder to commence the withholding;

(5) A statement that the obligor has the right to contest the withholding, a statement of the procedures available for contesting the withholding, and a statement that the only basis for contesting is a mistake of fact as defined in § 30-510(c);

(6) A statement of the actions that will be taken if the obligor contests the withholding;

(7) A statement that, within 10 days after termination or change of employment or change of the obligor's home address, the obligor shall notify the Court and provide the following information:

(A) The obligor's social security number;

(B) The obligor's home address and telephone number; and

(C) The name, address, and telephone number of the obligor's employer; and

(8) The time period within which the withholding shall begin and the information given to the holder pursuant to § 30-511.

(d)(1) In the case of wages not subject to immediate withholding, including cases subject to a finding of good cause or a written agreement, the court shall issue advance notice of initiated withholding to the absent parent on the earliest of the following dates:

(A) If the absent parent's address is known:

(i) Within 15 days of the date on which the arrearages equal support payable for one month;

(ii) The date on which the absent parent requests payment to begin, if the date is approved by the court; or

(iii) A date established by the court pursuant to child support procedures; or

(B) If the parent's address is not known, within 15 calendar days of locating the parent.

(2) The advance notice shall include the information set forth in subsection (c) of this section. (Feb. 24, 1987, D.C. Law 6-166, § 10, 33 DCR 6710; July 25, 1990, D.C. Law 8-150, § 4(c), 37 DCR 3720; Apr. 9, 1997, D.C. Law 11-170, § 2(c), 43 DCR 4480.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, 30-508, and 30-522.

This section is referred to in § 30-522.

Effect of amendments. — D.C. Law 11-170 added (d).

Temporary amendments of section. — Section 2(c) of D.C. Law 11-148 added (d).

Section 4(b) of D.C. Law 11-148 provides that the act shall expire after 225 days of its having taken effect or on the effective date of the Child Support Enforcement Amendment Act of 1996, whichever occurs first.

Section 7(g) of D.C. Law 12-(Act 12-279) amended (c)(7) to read as follows:

“(c) The notice of intent to withhold as required in subsections (a) and (b) of this section shall include the following:

“(7) A statement that, within 10 days after termination or change of employment or change of the obligor’s home address, the obligor shall notify the Court and provide the following information:

“(A) The obligor’s social security number;

“(B) The obligor’s residential and mailing address and telephone number;

“(C) Name, address, and telephone number of all employers, including all names under which each employer does business, and, if the party is self-employed, the party’s business address and all names under which the party does business; and

“(D) Driver’s license number; and”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(c) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and § 2(c) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

Section 4 of D.C. Act 11-304 provides for the application of the act.

Section 4 of D.C. Act 12-31 provides for application of the act.

For temporary amendment of section, see § 7(g) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 8-150. — See note to § 30-524.1.

Legislative history of Law 11-47. — See note to § 30-505.

Legislative history of Law 11-148. — See note to § 30-505.

Legislative history of Law 11-170. — See note to § 30-505.

Delegation of authority pursuant to Law 6-166. — See Mayor’s Order 87-273, December 10, 1987.

Cited in *McNeil v. Reynolds*, App. D.C., 575 A.2d 270 (1990); *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

§ 30-510. Objections to withholding.

(a) The Clerk shall issue the notice of withholding pursuant to § 30-511 unless the obligor files an objection to contest the withholding pursuant to this section within 15 days after the notice of intent to withhold is mailed.

(b) The notice to the holder pursuant to § 30-511 shall be sent within 45 days of the date that the notice of intent to withhold was sent to the obligor pursuant to subsection (a) and this subsection. Any objections raised by the obligor shall be resolved within 45 days from the date that the notice of intent to withhold was sent.

(c) The only grounds for objection by an obligor are mistakes of fact which are defined as:

(1) The amount of arrears;

(2) The identity of the obligor; and

(3) Whether the amount to be withheld as a periodic payment exceeds the limits of 15 U.S.C. § 1673(b).

(d) Payment of arrearages after the date of the application to the Clerk of the Court for the issuance of a notice of intent to withhold pursuant to subsection (b) of this section is not a defense to the withholding.

(e)(1) Objections filed to contest the withholding shall be filed with the Court.

(2) The Court shall order withholding in all cases except where the identity of the obligor is mistaken or where arrearages have never equaled 30 days of support payments, and shall notify the obligor.

(3) The notice of withholding shall include the time period within which the withholding shall begin, and shall contain the information given to the holder pursuant to § 30-511.

(4) The Court shall not grant any request to stay implementation of withholding pending further objections or appeal.

(5) If the Court determines that the amount to be withheld as a periodic payment exceeds the limits of 15 U.S.C. § 1673(b), then the Court shall issue a notice of withholding to the holder that complies with those limits.

(f) Notice to an obligor sent pursuant to § 30-522 shall comply with this section and provisions in § 30-522(a)(3). (Feb. 24, 1987, D.C. Law 6-166, § 11, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, 30-508, 30-509, 30-511, and 30-522.

Legislative history of Law 6-166. — See note to § 30-501.

No credit for payments not made to the plaintiff. — Defendant in a child support arrearages action is not entitled to credit or reimbursement for expenditures made to or on behalf of the children in lieu of direct child support payments to the plaintiff. *Savage v. Savage*, 117 WLR 221 (Super. Ct. 1989).

Obligation to pay child support accord-

ing to court order, not actual custody of child. — Where father was to have had custody of the parties' daughter for the months of July and August, and during these 2 months did not have to pay any child support, regardless of whether or not the parties chose to obey the court's order as to custody, the respondent was only obligated to pay child support for 10 months out of each year. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Cited in *McNeil v. Reynolds*, App. D.C., 575 A.2d 270 (1990).

§ 30-511. Notice of withholding to the holder.

(a) After issuance of the notice of intent to withhold, and the determination, against the obligor, of any objections raised by the obligor under § 30-510, but within 45 days from the date the notice of intent to withhold was issued to the obligor, the Clerk of the Court shall issue a notice to the holder.

(a-1) In the case of immediate wage withholding, the Clerk of the Court shall issue a notice to withhold within 15 days of the date the support order is issued if the employer's address is known, or if the employer's address is unknown, within 15 days of locating the employer's address.

(b) The notice issued under subsections (a) and (a-1) of this section shall explain the following:

(1) The amount to be withheld for support and other purposes and that the amount to be withheld may not exceed the limits imposed under 15 U.S.C. § 1673(b);

(2) That, if the holder is the obligor's employer, the holder must send the withheld amount to the Court at the same time the obligor is paid;

(3) That the holder may deduct and retain an additional \$2 for processing costs;

(4) That the withholding is binding on the holder until further notice by the Court;

(5) That the holder or employer may be fined in accordance with § 30-519(c) for discharging an obligor from employment, refusing to employ an obligor, or taking disciplinary action against any obligor because of the withholding;

(6) That, if the holder fails to withhold earnings or other income as required under this chapter, the holder will be liable as specified in § 30-513;

(7) That the withholding has priority as specified in § 30-508(a)(3);

(8) That the holder may combine withheld amounts from more than one obligor in a single payment and separately identify the portion of the payment that is attributable to each obligor;

(9) That the holder must withhold according to the requirements of § 30-512; and

(10) That the holder shall give notice to the Court of termination of employment of the obligor as required by § 30-516. (Feb. 24, 1987, D.C. Law 6-166, § 12, 33 DCR 6710; Apr. 9, 1997, D.C. Law 11-170, § 2(d), 43 DCR 4480.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, 30-509, 30-510, 30-512, 30-516, 30-518, and 30-519.

This section is referred to in § 30-522.

Effect of amendments. — D.C. Law 11-170 inserted (a-1); and substituted “subsections (a) and (a-1)” for “subsection (a)” in (b).

Temporary amendments of section. — Section 2(d) of D.C. Law 11-148 inserted (a-1); and substituted “subsections (a) and (a-1)” for “subsection (a)” in (b).

Section 4(b) of D.C. Law 11-148 provides that the act shall expire after 225 days of its having taken effect or on the effective date of the Child Support Enforcement Amendment Act of 1996, whichever occurs first.

Section 7(h) of D.C. Law 12-(Act 12-279) added (a-2) and amended (b) to read as follows:

“(a-2) Notwithstanding subsection (a) of this section, the Superior Court and IV-D agency may execute a withholding order by issuing to the holder a notice to withhold, including issuing the notice electronically, without providing prior notice to the child support or spousal support obligor in a case in which an original support order or a modification of a support order is effective after the effective date of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997.

“(b) The notice issued under subsections (a), (a-1), and (a-2) of this section shall explain the following:

“(1) The amount to be withheld for support and other purposes and that the amount to be withheld may not exceed the limits imposed under 15 U.S.C. § 1673(b);

“(2) That, if the holder is the obligor’s employer, the holder must send the withheld amount to the Court at the same time the obligor is paid, except as provided in § 30-512(a) and (e);

“(3) That the holder may deduct and retain an additional \$2 for processing costs or, if applicable, an amount permitted under § 30-512(e);”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(d) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and § 2(d) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

Section 4 of D.C. Act 11-304 provides for the application of the act.

Section 4 of D.C. Act 12-31 provides for application of the act.

For temporary amendment of section, see § 7(h) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 11-47. — See note to § 30-505.

Legislative history of Law 11-148. — See note to § 30-505.

Legislative history of Law 11-170. — See note to § 30-505.

§ 30-512. Holder's duty to withhold and make payments.

(a) A holder required to withhold earnings or other income shall withhold and make payment no later than the first pay period that occurs after 14 days following the date the notice was mailed or no later than the date the applicable income becomes due or otherwise available to the obligor. Thereafter, the holder shall send the required withholding to the Court on the same date the obligor is compensated.

(b) When the holder has received written notice of any legal proceedings challenging the withholding or the judgment or order of support on which it is based, the holder shall continue to withhold the payments from the obligor until receipt of a notice from the Court informing the holder to cease the withholding.

(c) Any payment made by a holder in conformity with this section shall discharge the liability of the holder to the obligor to the extent of the payment.

(d) The holder, upon whom a notice of withholding as provided by § 30-511 is served, may deduct and retain from the person's earnings or other income an additional \$2 for each deduction made in accordance with the notice. Where the total amount to be withheld, together with a fee, exceeds the limitations set forth in 15 U.S.C. § 1673(b), the amount of withholding shall be reduced by the holder to conform with the limitations, but the amount of the fee shall not be reduced by reason of the limitations. (Feb. 24, 1987, D.C. Law 6-166, § 13, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-511.

Temporary amendment of section. — Section 7(i) of D.C. Law 12-(Act 12-279) amended (a) and added (e) to read as follows:

"(a) A holder required to withhold income shall withhold and make the first payment to the Court no later than 7 business days after the date the amount would have been paid or credited to the obligor. Thereafter, the holder shall send the required withholding to the Court on the same date that the obligor is compensated.

"(e) Notwithstanding any other provision of this act, if an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

"(1) The employer's fee for processing an

income withholding order;

"(2) The maximum amount permitted to be withheld from the obligor's income;

"(3) The time periods within which the employer must implement the income withholding order and forward the child support payment;

"(4) The priorities for withholding and allocating income withheld for multiple child support obligees; and

"(5) Any withholding terms or conditions not specified in the order."

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(i) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-513. Judgment against holder for failure to comply.

(a) Except as provided in subsection (b) of this section, if a holder fails to withhold earnings or other income in accordance with this chapter, judgment shall be entered against the holder for any amount not withheld and for any reasonable counsel fees and Court costs incurred by the obligor, caretaker, custodian, or their representative.

(b) Subsection (a) of this section shall not apply where the holder proves, by a preponderance of the evidence, that the failure to withhold was due to exigent circumstances beyond the holder's control. (Feb. 24, 1987, D.C. Law 6-166, § 14, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-511.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-514. Termination of withholding.

(a) Withholding shall terminate:

(1) When the support obligation has been terminated and the total arrearage has been satisfied;

(2) When the holder, by reason of termination of employment or other reason, no longer holds earnings or other income payable to the obligor;

(3) When the payee has failed to give notice to the Court of a change of address as required by subsections (b) and (c) of this section; or

(4) When the foreign jurisdiction gives notice to the Court that withholding is no longer required.

(b) If the address of a payee changes, the payee, within a reasonable time, shall notify the Court.

(c) If, because of the failure of a payee to give notice under this section, the Court is unable, for a 3-month period, to deliver payments owed pursuant to the withholding order, the Court shall return each undeliverable payment to the obligor and inform the holder to cease the withholding. (Feb. 24, 1987, D.C. Law 6-166, § 15, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-515. Lapse of order of withholding.

An order of withholding issued by the Court or other appropriate agency upon a judgment or order for support and issued within 12 years from the date of the judgment or order shall not lapse or become invalid before complete satisfaction solely by reason of the expiration of the period of limitation set forth in § 15-101. (Feb. 24, 1987, D.C. Law 6-166, § 16, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-516. Termination of employment.

(a) Within 10 days after an employer receives notice that the obligor will terminate employment or within 10 days after the termination, whichever occurs earlier, the employer shall notify the Court and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

(b) Within 20 days of receipt of information regarding the obligor's new place of employment, the Court shall notify the obligor's new employer, in accordance with the requirements of § 30-511, that the withholding is binding on the new employer. (Feb. 24, 1987, D.C. Law 6-166, § 17, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, 30-511, and 30-522.

Temporary amendment of section. — Section 7(j) of D.C. Law 12-(Act 12-279) amended (b) to read as follows:

“(b) Within 20 days of receipt of information regarding the obligor's new place of employment, or within 2 business days after the date information regarding the obligor is entered into the District of Columbia Directory of New Hires pursuant to section 27e, whichever comes first, the Court or IV-D agency shall notify the

obligor's new employer, in accordance with the requirements of § 30-511, that the withholding is binding on the new employer.”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(j) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-517. Limitations and priorities.

(a) When there is more than one withholding order against a single obligor under this chapter, the Court shall prorate the withholdings for current support among the orders up to the limits of § 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)).

(b) If current support payments do not exceed the limits of § 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)), payments toward arrearages shall be prorated by the Court among the orders. (Feb. 24, 1987, D.C. Law 6-166, § 18, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-518. Voluntary income withholding.

(a) Any person who is the obligor on a support order of this jurisdiction or another jurisdiction may obtain voluntary income withholding by filing with the Court a request for withholding and a certified copy of the support order if the order is from another jurisdiction.

(b) Upon receipt of a request under subsection (a) of this section and appropriate documentation, the Court shall issue a notice to the holder pursuant to § 30-511. Payment shall be made through the Court. (Feb. 24, 1987, D.C. Law 6-166, § 19, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

Cited in *Rosenberg v. Rosenberg*, 116 WLR 1469 (Super. Ct. 1988).

§ 30-519. No discrimination in employment for withholding.

(a) No employer shall discharge, refuse to employ, take disciplinary action, or otherwise discriminate against any employee or obligor for the reason that a party has subjected or attempted to subject unpaid earnings of the employee or obligor to withholding or like proceedings for the purposes of paying child support.

(b) There shall be a rebuttable presumption that any employer who engages in conduct described in subsection (a) of this section, within 90 days from the date of receipt of the notice to the holder pursuant to § 30-511, is in violation of this chapter and may be subject to the sanctions in subsection (c) of this section.

(c) Any employer who engages in conduct described in subsection (a) of this section shall be subject to a civil penalty of up to \$10,000.

(d) Any civil penalty obtained under subsection (c) of this section shall be used to offset the obligor's duty of child support. (Feb. 24, 1987, D.C. Law 6-166, § 20, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-511.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-520. Payments by employer where employee has no salary or salary inadequate for services rendered.

Where the obligor claims to be rendering services without salary or compensation, or at a salary or compensation so inadequate as to satisfy the Court that the salary or compensation is merely colorable and designed to defraud or impede withholding, the Court may direct the employer to make payments to satisfy the withholding order in installments, based upon a reasonable value of the services rendered by the obligor under this employment or upon the obligor's current earnings ability. (Feb. 24, 1987, D.C. Law 6-166, § 21, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-521. Quashing withholding where judgment obtained to hinder just claims.

Where a notice of withholding issued under this chapter is based upon a judgment obtained by default or consent without a trial upon the merits, the Court, upon motion of an interested person, may quash the withholding upon satisfactory proof that the judgment was obtained without just cause and

solely for the purpose of preventing or delaying the satisfaction of just claims. (Feb. 24, 1987, D.C. Law 6-166, § 22, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-522. Interstate withholding; procedure for entering a support order of another jurisdiction for withholding.

(a) Upon receiving a support order of another jurisdiction from an appropriate agency of the other jurisdiction, with the documentation specified in subsection (c) of this section, the following shall take place:

(1) The Clerk of the Family Division of the Court shall accept the documents filed and enter the support order upon the docket and that entry shall constitute acceptance of the support order under this chapter;

(2) The Clerk of the Court shall process withholding under this chapter; and

(3) The Clerk of the Court shall issue a notice to withhold pursuant to § 30-511 and, within 15 calendar days of locating the obligor or the holder, the Clerk of the Court shall issue a notice of intent to withhold pursuant to § 30-509, which shall include the following:

(A) A statement that, if contested, a support order entered pursuant to this section and the accompanying sworn or certified statement shall constitute prima facie proof, without further proof of foundation, that the support order is valid, that the amount of current support payments and arrearages is as stated, and that the payee would be entitled to withholding under the law of the jurisdiction that issued the support order;

(B) A statement that, once a prima facie case has been established, the obligor may raise, in addition to those rights available under this section, only matters that would be available to him as defenses in an action to enforce a foreign money judgment; and

(C) A statement that, if the obligor shows to the Court that an appeal from the order is pending, will be taken, or that a stay of execution has been granted, the Court may stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the defendant has furnished security for payment of the support ordered as required by the initiating jurisdiction.

(b) Any stay granted as referred to in subsection (a)(3)(C) of this section shall also stay the time limitations for rendering a decision on withholding pursuant to §§ 30-516(b) and 30-510(b).

(c) The following documentation is required for the entry of a support order of another jurisdiction:

(1) A certified copy of the support order with all modifications;

(2) A certified copy of any income withholding order or notice still in effect;

(3) A copy of the portion of the income withholding statute of the jurisdiction that issued the support order, which states the requirements for obtaining income withholding under the law of the jurisdiction;

(4) A sworn statement of the obligee or certified statement of the agency of the arrearages, if any; and

(5) A statement of:

(A) The name, address, and social security number of the obligor, if known;

(B) The name and address of the obligor's employer in this jurisdiction or of any other source of earnings or other income of the obligor derived in the District against which income withholding is sought; and

(C) The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(d) If the documentation received by the Court pursuant to subsection (a) of this section does not conform to the requirements of subsection (c) of this section, the Court shall remedy any defect that it can without the assistance of the requesting agency or person. If the Court is unable to make the corrections, the requesting agency or person shall be notified of the necessary additions or corrections. If required by the initiating jurisdiction, the Clerk of the Court shall provide the information necessary to carry out the withholding within 30 calendar days of receipt of the initiating jurisdiction's request for information. The Court shall accept the documentation required by subsections (a) and (c) of this section even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

(e) If the earnings or other income of the obligor is not derived in the District, the Court shall notify the initiating jurisdiction that no action will be taken.

(f) Entry of the order shall not confer jurisdiction on the Court for any purpose other than withholding of earnings or other income.

(g) The Court, upon receiving a certified copy of any amendment or modification to a support order entered, shall initiate, as though it was a support order of this jurisdiction, necessary procedures to amend or modify the income withholding order or notice of jurisdiction that was based upon the entered support order.

(h) If the Court determines that the obligor has obtained employment or has a new or additional source of income in another jurisdiction, it shall notify the agency that requested the income withholding of the changes within 20 working days of receiving the information and shall forward to that agency all information it has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The Court shall include with the notice a certified copy of any income withholding order in effect in this jurisdiction. (Feb. 24, 1987, D.C. Law 6-166, § 23, 33 DCR 6710; Apr. 30, 1988, D.C. Law 7-104, § 23, 35 DCR 147; Apr. 9, 1997, D.C. Law 11-170, § 2(e), 43 DCR 4480.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, 30-507, 30-509, and 30-510.

Effect of amendments. — D.C. Law 11-170 rewrote the introductory paragraph of (a)(3); and inserted the present third sentence in (d).

Temporary amendment of section. — Section 2(e) of D.C. Law 11-148 rewrote the introductory paragraph of (a)(3); and inserted the present third sentence in (d).

Section 4(b) of D.C. Law 11-148 provides that the act shall expire after 225 days of its having

taken effect or on the effective date of the Child Support Enforcement Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(e) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and see § 2(e) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

Section 4 of D.C. Act 11-304 provides for the application of the act.

Section 4 of D.C. Act 12-31 provides for application of the act.

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 7-104. — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and Dec. 8, 1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-47. — See note to § 30-505.

Legislative history of Law 11-148. — See note to § 30-505.

Legislative history of Law 11-170. — See note to § 30-505.

Earnings not derived in District. — Since defendant worked for a part of the Navy's Office of General Counsel that was physically located in Virginia, he was employed in that state; under the clear meaning of the word "derived" and the legislative intent behind subsection (e) of this section, defendant did not physically earn or derive his earnings or other income in the District of Columbia. Consequently, under subsection (e) of this section and 45 C.F.R. § 303.100(g)(4) (1987), Superior Court must notify initiating jurisdiction that it will take no action. *Rosenberg v. Rosenberg*, 116 WLR 1469 (Super. Ct. 1988).

Cited in *Savage v. Savage*, 117 WLR 221 (Super. Ct. 1989); *McNeil v. Reynolds*, App. D.C., 575 A.2d 270 (1990).

§ 30-523. Initiation of withholding in other jurisdictions.

(a) Where an obligor under an order of support as described in § 30-507 derives income in another jurisdiction, any caretaker, custodian, responsible relative, or the Mayor may file an application requesting the Clerk of the Court to request the appropriate agency in the other jurisdiction to issue a notice or order to withhold that income.

(b) Within 20 calendar days of a determination that a withholding is required in a particular case and receipt of information necessary to carry out the withholding, the Clerk of the Court shall notify the IV-D agency in the jurisdiction in which the obligor is employed to implement interstate withholding. The notice shall include all information necessary to carry out the withholding, including:

- (1) The amount requested to be withheld;
- (2) A certified copy of the support order with all modifications;
- (3) A certified copy of any income withholding order or notice still in effect;

and

(4) If appropriate, a sworn statement of the obligee or certified statement of the IV-D agency of the arrearages. (Feb. 24, 1987, D.C. Law 6-166, § 24, 33 DCR 6710; Apr. 9, 1997, D.C. Law 11-170, § 2(f), 43 DCR 4480.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Effect of amendments. — D.C. Law 11-170 added (b).

Temporary amendment of section. — Section 2(f) of D.C. Law 11-148 added (b).

Section 4(b) of D.C. Law 11-148 provides that the act shall expire after 225 days of its having

taken effect or on the effective date of the Child Support Enforcement Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(f) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(f) of the Child

Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and § 2(f) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

Section 4 of D.C. Act 11-304 provides for the application of the act.

Section 4 of D.C. Act 12-31 provided for application of the act.

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 11-47. — See note to § 30-505.

Legislative history of Law 11-148. — See note to § 30-505.

Legislative history of Law 11-170. — See note to § 30-505.

Delegation of authority pursuant to Law 6-166. — See Mayor's Order 87-273, December 10, 1987.

§ 30-524. Enforcement of orders by means other than income withholding.

(a) A lien may be asserted by the Mayor or the custodian to whom support is payable upon the real and personal property of the responsible relative. In addition to withholding of earnings or other income, this lien shall be separate from and in addition to any other lien created by or provided for under law. The District or the custodian to whom support is payable shall have the priority of a secured creditor.

(b) An action to collect subrogated or assigned support by lien and foreclosure, distraint, seizure and sale, or an order to withhold and deliver shall be lawful on the date the order is issued. (Feb. 24, 1987, D.C. Law 6-166, § 25, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Temporary amendment of section. — Section 7(k) of D.C. Law 12-(Act 12-279) added (c) and (d) to read as follows:

“(c) A lien shall arise by operation of law against the real and personal property of a child support or spousal support obligor who resides or owns property in the District for amounts of overdue support, as defined by section 466(e) of the Social Security Act, approved August 16, 1984 (98 Stat. 1306; 42 U.S.C. sec. 666(e)), that are owed by the obligor. The lien shall be enforceable from the date the lien is filed and recorded in the Office of the Recorder of Deeds of the District of Columbia.

“(d) The District shall accord full faith and credit to liens described in subsection (c) of this section that arise in another state, if the other state's IV-D agency, a party to a support action,

or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise in the District, except that judicial notice or hearing prior to enforcement of the lien shall not be required.”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(k) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

Delegation of authority pursuant to Law 6-166. — See Mayor's Order 87-273, December 10, 1987.

§ 30-524.1. Interception of lottery prizes for delinquent child support payments.

(a) In the case of orders being enforced by the IV-D agency, the Mayor may intercept a lottery prize winning of an individual who owes delinquent support, as defined in § 466(e) of the Social Security Act, approved August 16, 1984 (98 Stat. 1310; 42 U.S.C. 666(e)).

(b) Prior to interception of an individual's lottery prize winnings, the Mayor shall provide notice to the lottery prize winner of the pending interception of

the lottery prize winnings and of the opportunity to contest the interception of the lottery prize winnings. (Feb. 24, 1987, D.C. Law 6-166, § 25a, as added July 25, 1990, D.C. Law 8-150, § 4(e), 37 DCR 3720; Feb. 5, 1994, D.C. Law 10-68, § 28(a), 40 DCR 6311.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-501.

Legislative history of Law 8-150. — Law 8-150 was introduced in Council and assigned Bill No. 8-461, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by the Mayor on May 30, 1990, it was assigned Act No. 8-208 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

§ 30-524.2. Parent locator service.

(a) A Parent Locator Division (“Division”) is established within the Office of Paternity and Child Support Enforcement of the Department of Human Services to maintain a parent locator service to locate a parent of a child in need of child support.

(b) Any officer or employee of the District shall cooperate with the Division to determine the location of a parent who is not supporting his or her child. The officer or employee shall provide any pertinent information that relates to the location, income, or property of a parent, notwithstanding any District statute, ordinance, or rule that makes the information confidential.

(c) Any company, corporation, partnership, association, union, or organization doing business in the District shall provide the Division with the following available information, if the Division certifies that the information shall be used to locate a parent of a child in need of support and that the information obtained will be treated as confidential by the Division unless the parent’s name is published for child support arrearages pursuant to § 30-525:

- (1) Full name of parent;
- (2) Name and address of parent’s employer;
- (3) Social security number of parent;
- (4) Date of birth of parent;
- (5) Home address of parent;
- (6) Amount of wages earned by parent; and

(7) Number of dependents claimed by parent on state and federal income withholding forms.

(d) A person may not knowingly refuse to give the parent locator service information that will assist the parent locator service in locating the parent of a child.

(e) Any person who knowingly refuses to provide information or provides false information that has been requested pursuant to subsection (c) of this section, upon conviction, shall be imprisoned for not more than 3 months, fined not more than \$1,000, or both. (Feb. 24, 1987, D.C. Law 6-166, § 25b, as added July 25, 1990, D.C. Law 8-150, § 4(e), 37 DCR 3720; Feb. 5, 1994, D.C. Law 10-68, § 28(b), 40 DCR 6311.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-501.

Legislative history of Law 8-150. — See note to § 30-524.1.

Legislative history of Law 10-68. — See note to § 30-524.1.

Editor's notes. — This section has been redesignated from former § 30-526.1, and former § 30-526.2 has been redesignated as present § 30-526.1, at the direction of the District of Columbia Codification Counsel.

§ 30-525. Reporting and publication of delinquent accounts.

(a) Upon request by an individual who is owed overdue support or a consumer reporting agency, as defined in 15 U.S.C. § 1681a(f), the Mayor shall make available information regarding an amount of overdue support as defined in 42 U.S.C. § 666(e), if the amount of overdue support is greater than \$1,000.

(b) The Mayor may publish the name, last known address, and amount of overdue child support of an obligor, if the obligor's child support payments are more than \$2,000 in arrears. The publication shall be in at least 2 daily and 2 weekly newspapers published and circulated generally in the District of Columbia.

(c) The Mayor shall notify the obligor of the proposed action and of the obligor's right to contest the accuracy of the information to be released. The Mayor shall provide the obligor with an opportunity to contest the accuracy of the information. (Feb. 24, 1987, D.C. Law 6-166, § 26, 33 DCR 6710; July 25, 1990, D.C. Law 8-150, § 4(d), 37 DCR 3720; Feb. 13, 1996, D.C. Law 11-87, § 3(a), 42 DCR 6767.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-526.1.

Effect of amendments. — D.C. Law 11-87 inserted "an individual who is owed overdue support or" in (a).

Temporary amendment of section. — Section 7(l) of D.C. Law 12-(Act 12-279) amended this section so as to read as follows:

"(a) The IV-D agency shall report to a consumer credit reporting agency, as defined in 15 U.S.C. § 1681a(f), each child and spousal support obligation that was entered, modified, registered, or is being enforced in the District, if the obligor's support obligations are over 30 days past due.

"(a-1) The IV-D agency shall develop standards for consumer credit reporting that shall be consistent with credit reporting industry standards and reporting format.

"(a-2) A report of a support obligation shall include, at a minimum, the amount of the obligation, the amount paid, the amount overdue (if any), and the names of the obligor and obligee. The IV-D agency shall update this information on a quarterly basis.

"(a-3) The IV-D agency is responsible for the accuracy of information provided pursuant to this section. The information shall be based

upon the data available at the time the information is provided to a consumer credit reporting agency. The IV-D agency and the credit reporting agency shall follow reasonable procedures to ensure accuracy of the information provided. The IV-D agency shall not be liable for any consequences of the failure of an obligor or the obligee to contest the accuracy of the information within the time allowed under subsection (c) of this section.

"(b) The Mayor may publish the name, last known address, and amount of overdue child support of an obligor, if the obligor's child support payments are more than \$2,000 in arrears. The publication shall be in at least 2 daily and 2 weekly newspapers published and circulated generally in the District of Columbia.

"(c) The IV-D agency shall send notice of the publication or initial consumer credit report by first class mail to the last known addresses of the obligor and obligee at least 30 days before the publication or initial report. The notice shall inform the obligor and obligee of their right to contest the accuracy of the information to be released.

"(d) The IV-D agency shall provide the obligor and the obligee with an opportunity to contest in writing the accuracy of the information in a

consumer credit report or publication. If the IV-D agency receives a written objection contesting the accuracy of the information, the IV-D agency shall request the credit reporting agency receiving the information to note on the report that the information is being disputed, until the IV-D agency determines the accuracy of the information.

“(e) The only grounds for contesting the accuracy of the information in a consumer credit report or publication are as follows: errors in the identities of the obligor or obligee; the amount of the support order; the amount of payment or arrears; or any other fact reported to the credit reporting agency.

“(f) The IV-D agency may enter into a cooperative agreement with another District government agency, the Superior Court, or a private entity to carry out all or part of the functions required of the IV-D agency under this section.

“(g) Subsections (a) and (c) through (f) shall

become effective 60 days after the effective date of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997.”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(l) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

Legislative history of Law 8-150. — See note to § 30-524.1.

Legislative history of Law 11-87 — See note to § 30-525a.

Short title. — See note to § 30-501.

Delegation of authority pursuant to Law 6-166. — See Mayor’s Order 87-273, December 10, 1987.

§ 30-525.1. Sanctions.

(a) Notwithstanding any other law or regulation, no car registration or driver’s license shall be renewed or issued to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support. A car registration or driver’s license that has been issued to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments shall be revoked.

(b) Notwithstanding any other law or regulation, no professional or business license shall be renewed or issued in the District to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments. A professional or business license that has been issued to an obligor who is receiving income and who owes overdue child support shall be revoked. As used in this subsection, the term “professional or business license” includes any approval, certificate, registration, permit, statutory exemption, or other form of permission to practice a profession or to operate a business, as granted by a commission or a professional licensing body of the government of the District of Columbia.

(c) Prior to an act to deny issuance or renewal, or an act to revoke, the car registration, driver’s license, or professional or business license of an obligor who is receiving income and who owes overdue child support, the Mayor must provide 30-days written notice to the obligor. The notice shall specify:

- (1) The amount of arrears owed;
- (2) How, when, and where the notice can be contested;

(3) That the licensing authority will deny issuance or renewal, or revoke the registration or license 30 days after the issuance of the notice unless the arrearage is paid in full, or the obligor agrees to a payment schedule that requires the obligor to make monthly child support payments toward overdue support in an amount equal to 25% of the obligor’s current monthly child support obligation as long as the obligor is receiving income; and

(4) That failure to comply with the agreed to payment schedule shall result in the denial of an issuance or renewal, or a revocation, of the obligor's registration or license.

(d) The Mayor shall provide the obligor with the opportunity to demonstrate why his or her registration or license should not be denied or revoked under this section. The only issues to be determined are as follows:

(1) Whether the person named in the court notice is a licensee or applicant, has his or her car registered in the District of Columbia, and seeks to have a car registration issued or renewed;

(2) Whether the arrearage has been paid in full, or whether a payment schedule has been agreed to and complied with;

(3) Whether the obligor is currently receiving income; and

(4) Whether the driver's license or car registration or professional or business license should be revoked, or the issuance or renewal should be denied.

(e) If the Clerk of the Court has notified the Mayor that an obligor is receiving income and owes overdue child support in an amount equal to at least 60 days of support, and the obligor presents no evidence under subsection (d) of this section that the arrearage has been paid in full, or that a payment schedule has been agreed to and complied with, the obligor's license or registration shall be revoked, or the request for the issuance or renewal of a license or registration shall be denied.

(f) If the obligor under this chapter is a member of the District of Columbia Bar, the Clerk of the Court shall send written notice to the Board of Professional Responsibility so that appropriate action may be taken. (Feb. 24, 1987, D.C. Law 6-166, § 26a, as added Feb. 13, 1996, D.C. Law 11-87, § 3(b), 42 DCR 6767.)

Temporary amendment of section. — Section 7(m) of D.C. Law 12-(Act 12-279) amended (a) to (e) and added (g) so as to read as follows:

"(a) Notwithstanding any other law or regulation, no car registration or driver's license shall be renewed or issued to an obligor who fails to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice, or to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support. Notwithstanding any other law or regulation, a car registration or driver's license that has been issued to an obligor who fails to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice, or to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments shall be revoked.

"(b) Notwithstanding any other law or regulation, no professional, business, recreational, or sporting license shall be renewed or issued in the District to an obligor who fails to comply with a subpoena or warrant relating to pater-

nity or child support proceedings after receiving notice, or to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments. Notwithstanding any other law or regulation, a professional, business, recreational, or sporting license that has been issued to an obligor who fails to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice, or to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments, shall be revoked. As used in this subsection, the terms "professional license" and "business license" include any approval, certificate, registration, permit, statutory exemption, or other form of permission to practice a profession or trade, or to operate a business, as granted by a commission, agency, or a professional licensing body of the government of the District of Columbia. The terms "recreational license" and "sporting license" include any approval, certificate, registration, permit, statutory exemption, or other form of permission to hunt, fish, use playing fields, participate in an athletic league,

operate a boat or other recreational vehicle for a non-business purpose, or operate or own a weapon for a non-business purpose, as granted by a commission, agency, or a licensing body of the government of the District of Columbia.

“(c) The Mayor shall provide 30-days’ written notice to the obligor prior to denying issuance or renewal, or revoking the car registration or driver’s, professional, business, recreational, or sporting license of an obligor pursuant to this section. The notice shall specify:

“(1) The amount of arrears owed, if any;

“(2) The date on which the obligor failed to comply with a subpoena or warrant, if applicable, and the nature of the obligor’s non-compliance;

“(3) How, when, and where the notice can be contested; and

“(4) That the licensing authority will deny issuance or renewal, or revoke the registration or license, 30 days after the issuance of the notice unless:

“(A) In the case of an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support, the obligor pays the arrearage in full, or the obligor agrees to and complies with a payment schedule that requires the obligor to make monthly child support payments toward overdue support in an amount equal to 25% of the obligor’s current monthly child support obligation as long as the obligor is receiving income, subject to the limitations of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. § 1601 et seq.). If the obligor becomes non-compliant with the payment schedule after 30 days but before the arrears are paid in full, denial or revocation shall take place immediately and without further notice;

“(B) In the case of an obligor who has failed to comply with a subpoena or warrant related to paternity or child support proceedings, the obligor complies with all process required by the Superior Court or IV-D agency for 30 days; or

“(C) In the case of an obligor who is receiving income and who owes at least 60 days of overdue child support and has failed to comply with a subpoena or warrant related to paternity or child support proceedings, the obligor complies with both subparagraphs (A) and (B) of this paragraph.

“(d) The Mayor shall provide the obligor with the opportunity to demonstrate why his or her registration or license should not be denied or revoked under this section. The only issues to be determined are as follows:

“(2) Whether the arrearage has been paid in

full, or whether a payment schedule has been agreed to and complied with, if the basis for denial or revocation is failure to pay overdue child support;

“(3) Whether the obligor is currently receiving income, if the basis for denial or revocation is failure to pay overdue child support;

“(3A) Whether the obligor failed to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice; and

“(4) Whether the driver’s license or car registration or professional, business, recreational or sporting license, license should be revoked, or the issuance or renewal should be denied.

“(e) If the Clerk of the Court has notified the Mayor that an obligor has failed to comply with a subpoena or warrant relating to paternity or child support proceedings, or that an obligor is receiving income and owes child support in an amount equal to at least 60 days of support, and the obligor presents no evidence under subsection (d) of this section that the obligor has complied with the terms described in subsection (c)(4)(A), (B) or (C) of this section, as applicable, the obligor’s license or registration shall be revoked, or the request for the issuance or renewal of the license or registration shall be denied.

“(g) No liability shall be imposed on a licensing authority for refusing to renew, refusing to issue, suspending, or revoking a registration or license if the action is in response to a court or administrative order pursuant to this section.”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(m) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 11-87. — Law 11-87, the “Child Support Enforcement and Licensing Compliance Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-225, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-158 and transmitted to both Houses of Congress for its review. D.C. Law 11-87 became effective on February 13, 1996.

§ 30-526. Limitation of liability.

Neither the District nor its officers or employees shall be responsible for any injury resulting from the improper enforcement of a lien, except that the District, its officers, and employees shall be liable for damages caused by gross negligence in the enforcement of liens. (Feb. 24, 1987, D.C. Law 6-166, § 27, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-526.1. Funding.

Incentive payments received by the District under Title IV-D of the Social Security Act (42 U.S.C. § 651 et seq.), based upon the District's IV-D program performance, and payments for fixed percentages of the costs of administering the IV-D program, which are reimbursed by the federal government, shall be appropriated to the IV-D agency for the purpose of funding for the program. This amount shall be in addition to the annual appropriation for the IV-D agency and the IV-D agency shall spend those funds as though appropriated through the annual appropriation for the year in which they are received. (Feb. 24, 1987, D.C. Law 6-166, § 27a, as added Aug. 17, 1991, D.C. Law 9-39, § 4(c), 38 DCR 4970.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Temporary addition of §§ 30-526.3 to 30-526.6. — Section 7(o) of D.C. Law 12-(12-279) added §§ 30-526.2 to 30-526.5, to read as follows:

“§ 30-526.2. Filing of identifying information by parties to paternity and support proceedings.

“(a) Upon the first personal appearance before the IV-D agency or the Superior Court in a paternity or child support matter, or upon entry of an order of paternity or child support, whichever is earlier, each party to a paternity or child support proceeding in the District of Columbia shall file and update as necessary with the IV-D agency (if the IV-D agency is assisting in the establishment of paternity or the establishment, modification or enforcement of support) and with the Superior Court the following information:

“(1) Name;

“(2) Residential and mailing addresses and telephone numbers;

“(3) Name, address, and telephone number of all employers, including all names under which each employer does business, and, if the party is self-employed, the party's business address and all names under which the party does business;

“(4) Social Security number; and

“(5) Driver's license number.

“(b) Provision of information pursuant to sub-

section (a) of this section shall be subject to the safeguards provided to victims or potential victims of domestic violence provided in § 16-925.

“(c) A party shall update any information required pursuant to subsection (a) of this section within 10 days of any change in that information.”

“§ 30-526.3. Authority of IV-D agency to expedite paternity and support processes.

“(a) The IV-D agency may take the following actions relating to paternity establishment or the establishment, modification or enforcement of child or spousal support orders, without obtaining an order from any judicial or other administrative tribunal:

“(1) Order genetic testing relating to the establishment of paternity;

“(2) Issue an administrative subpoena to an individual or private entity (including a financial institution) for financial or other information needed to establish, modify, or enforce a support order. This information may include information from a public utility or cable television company that provides the name and address of a customer or a customer's employer;

“(3) Require all public and private entities in the District to provide promptly, in response to a request from the District's IV-D agency or any other state's IV-D agency, information on the employment status, number of hours worked, title, employment start date, employment termination date (if applicable), whether the employee ever quit voluntarily, location of work

site, compensation, and benefits (including access to health insurance) of any employee of the entity, or of one of its contractors;

"(4) Obtain prompt access, including automated access, to information in the following records maintained or possessed by the District government, subject to any applicable privacy provisions under District or federal law:

"(A) Vital statistics;

"(B) Tax and revenue records;

"(C) Records of real and titled personal property;

"(D) Records of occupational, professional, recreational and sporting licenses issued under any District law or regulation;

"(E) Records concerning the ownership and control of corporations, partnerships, and other business entities;

"(F) Employment security records, subject to such restrictions as the Mayor may, by regulation, prescribe pursuant to the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946; D.C. Code § 46-101 et seq.).

"(G) Records concerning public assistance, as defined in § 3-201.1, subject to confidentiality restrictions set forth in the Public Assistance Act or prescribed by the Mayor;

"(H) Records maintained by the Department of Public Works, Bureau of Motor Vehicle Services; and

"(I) Records maintained by the Department of Corrections.

"(5) Direct an obligor or other payor to substitute for the payee of a support order, the appropriate governmental entity, upon notice to the obligor (or other payor) and obligee by first-class mail to their last known address, if the support is subject to:

"(A) An assignment to pay the District government under § 3-201.1 et seq.; title IV, part E of the Social Security Act, approved June 17, 1980 (94 Stat. 501; 42 U.S.C. § 670 et seq.); or section 1912 of the Social Security Act, approved October 25, 1977 (91 Stat. 1196; 42 U.S.C. § 1396k); or

"(B) A requirement to pay support through the Superior Court.

"(6) Order income withholding, including the amount of periodic support payments and any additional amount for overdue support payments;

"(7) When there is a support arrearage, secure assets to satisfy any current support obligation and the support arrearage by:

"(A) Intercepting or seizing periodic or lump-sum payments from:

"(i) Any District agency, including payments for unemployment compensation, worker's compensation, and other non-means-tested public benefits; and

"(ii) Judgments, settlements, and lotteries.

Interception or seizure of lottery prize winnings shall be made pursuant to § 30-524.1.

"(B) Attaching and seizing assets owned by the support obligor and held in financial institutions, or held in a financial institution by another on behalf of the support obligor;

"(C) Attaching public and private retirement funds to the extent permitted by federal law; and

"(D) Imposing liens pursuant to § 30-524 and, when appropriate, forcing the sale of property and distribution of proceeds;

"(8) Increase the amount of periodic support payments to include amounts for arrearages, subject to 15 U.S.C. § 1673, to secure overdue support; and

"(9) Enter agreements with financial institutions pursuant to section 13 of the Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998.

"(b) The IV-D agency shall provide to any person or entity, other than another agency of the District government, that is subject to IV-D actions under subsection (a) of this section prior notice of any action under subsection (a) of this section, an opportunity to contest the action with the IV-D agency, and an opportunity for a judicial appeal on the record. Sections 1-1509 and 1-1510 shall apply to such a contest, except that judicial review shall take place in the Superior Court.

"(c) A person or entity shall honor an administrative subpoena issued pursuant to subsection (a)(2) of this section to the same extent as a judicial subpoena issued by the Family Division of the Superior Court. If any person or entity neglects or otherwise fails to comply with a subpoena issued pursuant to subsection (a)(2) of this section, the IV-D agency may report this failure to the Superior Court of the District of Columbia, or one of its judges, and the Superior Court and its judges are empowered to compel obedience to the subpoena to the same extent that they may compel obedience with subpoenas issued by the Superior Court.

"(d) As an alternative to judicial enforcement pursuant to subsection (c) of this section, the IV-D agency may impose a civil penalty of up to \$1,000 per incident for failure to comply with a subpoena under subsection (a)(2) of this section, or for failure to comply with a request for information under subsection (a)(3) of this section. The IV-D agency may double the penalty if the failure to comply persists for more than 30 days from the date by which the subpoena or request required compliance. The Mayor may enter a penalty pursuant to this subsection as a judgment in the Superior Court, which shall be enforceable by the Corporation Counsel of the District of Columbia.

"(e) An administrative subpoena pursuant to subsection (a)(2) of this section may be served by first-class mail.

"(f) A District agency shall promptly provide information in response to a request by the IV-D agency pursuant to subsection (a)(4) of this section. If a District government agency fails to provide information requested by the IV-D agency pursuant to subsection (a)(4) of this section, the Mayor shall promptly direct the agency to comply within a period specified by the Mayor.

"(g) The Superior Court may issue an ex parte order to enforce any power asserted by the IV-D agency pursuant to subsection (a) of this section, upon petition by the IV-D agency.

"(h) No public or private entity providing the IV-D agency with information or access to information pursuant to this section shall be liable under any District law to any person for providing the information or access.

"(i) The IV-D agency shall promulgate rules pursuant to § 1-1501 et seq. to implement this section."

"§ 30-526.4. Recognition and enforcement of authority of other state IV-D agencies.

"Except as otherwise provided in this title, the IV-D agency shall recognize and enforce the authority of a IV-D agency in another state to take the actions specified in § 30-526.4(a), if those actions were taken in accordance with the laws and procedures of the other state."

"§ 30-526.5. Directory of new hires.

"(a) The Mayor shall establish and maintain a District of Columbia Directory of New Hires, which shall contain information supplied in accordance with subsection (b) of this section.

"(b) Except as specified in subsections (e), (f), and (g), within 20 days of the date an employee begins employment in the District of Columbia, or is rehired, the employer shall supply the following information to the District of Columbia Directory of New Hires:

"(1) Name of the employee;

"(2) Address of the employee;

"(3) Social Security number of the employee;

"(4) Date of birth of the employee;

"(5) Date of hire of the employee, defined as the first day that the employee performed services for compensation;

"(6) Employee's salary, wages, or other compensation;

"(7) Name of the employer;

"(8) Address of the employer; and

"(9) Employer identification number issued to the employer under section 6109 of the Internal Revenue Code of 1986.

"(c) An employer may, at the employer's option, supply the following information to the District of Columbia Directory of New Hires:

"(1) Name of an employer contact person;

"(2) Telephone number of an employer contact person; and

"(3) Availability of medical insurance coverage for the employee and the date on which the

employee became or will become eligible for the coverage, if appropriate.

"(d) Each report required by subsection (b) shall be:

"(1) Made on a W-4 Internal Revenue Service form or, at the option of the employer, an equivalent form; and

"(2) Transmitted by first class mail, magnetically, or electronically.

"(e) An employer that transmits reports to the District of Columbia Directory of New Hires magnetically or electronically may transmit reports in up to 2 monthly transmissions, not less than 12 days nor more than 16 days apart.

"(f) An employer that has employees in the District and in at least one other state and transmits reports magnetically or electronically may comply with subsection (b) of this section by designating either the District or a state in which the employer has employees and transmitting reports on new hires only to either the District or that state. Any employer transmitting reports pursuant to this subsection shall provide the United States Department of Health and Human Services with written notice of the jurisdiction the employer has designated.

"(g) Any department, agency, or instrumentality of the United States shall comply with this section to the extent permitted by section 453A(b)(1)(C) of the Social Security Act, approved August 22, 1996 (110 Stat. 2105; 42 U.S.C. § 653(i)) and D.C. Code § 1-233.

"(h) An employer who fails to comply with this section shall be subject to a civil penalty of \$25 for each employee with respect to whom the employer failed to comply, or the employer shall be subject to a civil penalty of \$500 for each employee with respect to whom the employer failed to comply, if the non-compliance was the result of a conspiracy between the employer and the employee not to supply the required report or to supply a false or incomplete report. The employer shall be penalized each calendar month until the employer complies. Penalties pursuant to this subsection shall be enforced in the Superior Court by the Corporation Counsel of the District of Columbia.

"(i) The Mayor may contract for services to carry out this section.

"(j) The Mayor shall promulgate rules pursuant to § 1-1501 et seq. to implement the provisions of this section, including establishment of a procedure for an employer to challenge the imposition of a civil penalty pursuant to subsection (h) of this section.

"(k) For purposes of this section:

"(1) 'Employee' means a person who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986, but does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has

determined that reporting pursuant to this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission;

“(2) ‘Employer’ has the meaning given to such term in section 3401(d) of the Internal Revenue Code of 1986, and includes any governmental entity and any labor organization, as defined under section 2(5) of the National Labor Relations Act, including a hiring hall.

“(3) ‘New hire’ means an employee for whom an employer is required to complete a new Internal Revenue Service Form W-4.

“(1) Information collected for the District of Columbia Directory of New Hires may be used by a federal agency, a state or District agency, or a private entity under contract with a government agency to:

“(1) Establish paternity;

“(2) Establish, modify, and enforce a child or spousal support order;

“(3) Administer worker’s compensation and unemployment insurance programs; and

“(4) Verify eligibility for public assistance programs.”

Section 16(b) of D.C. Law 12-(Act 12-279) provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of §§ 30-526.2 to 30-526.5, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 9-5. — Law 9-5 was introduced in Council and assigned Bill No. 9-142. The Bill was adopted on first and second readings on March 5, 1991, and April 5, 1991, respectively. Signed by the Mayor on April 26, 1991, it was assigned Act No. 9-20 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-39. — Law 9-39 was introduced in Council and assigned Bill No. 9-2, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-76 and transmitted to both Houses of Congress for its review.

Editor’s notes. — This section has been redesignated from former § 30-526.2, and former § 30-526.1 has been redesignated as § 30-524.2, at the direction of the District of Columbia Codification Counsel.

§ 30-527. Rulemaking authority.

The Mayor shall issue proposed rules to implement the provisions of this chapter and attendant federal law within 90 days from February 24, 1987, pursuant to subchapter I of Chapter 15 of Title 1. The proposed rules shall be submitted to the Council of the District of Columbia (“Council”) for a 30-day period of review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 30-day review period, the proposed rules shall be deemed approved. (Feb. 24, 1987, D.C. Law 6-166, § 28, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1, 30-346.5, and 30-508.

Temporary amendment of section. — Section 7(n) of D.C. Law 12-(Act 12-279) amended this section to read as follows:

“The Mayor, pursuant to subchapter I of Chapter 15 of Title 1 shall issue rules to implement the provisions of this chapter.”

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 7(n) of the

Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 6-166. — See note to § 30-501.

Delegation of authority pursuant to Law 6-166. — See Mayor’s Order 87-273, December 10, 1987.

Mayor’s Advisory Committee on Paternity and Child Support enforcement established. — See Mayor’s Order 88-91, April 12, 1988.

§ 30-528. Choice of law.

(a) The law and procedures of the jurisdiction in which the obligor is employed shall apply, except with respect to:

(1) When withholding must be implemented; and

(2) The statute of limitations for maintaining an action on arrearages of support payments.

(b) The Court shall apply the statute of limitations for maintaining an action on arrearages of support payments of either this jurisdiction or the jurisdiction that issued the support order, whichever is longer. (Feb. 24, 1987, D.C. Law 6-166, § 29, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

Cited in *Savage v. Savage*, 117 WLR 221 (Super. Ct. 1989); *D.C. v. P.L.*, 118 WLR 1729 (Super. Ct. 1990).

§ 30-529. Rules of procedure.

The Court shall establish rules of procedure necessary to effectuate the purposes of this chapter. (Feb. 24, 1987, D.C. Law 6-166, § 30, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

§ 30-530. Public Information Program.

The Mayor shall ensure that an extensive program of public information detailing the effects of this chapter is undertaken within 30 calendar days of February 24, 1987. (Feb. 24, 1987, D.C. Law 6-166, § 31, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

Delegation of authority pursuant to Law 6-166. — See Mayor's Order 87-273, December 10, 1987.

§ 30-531. Enforcement.

This chapter shall not be enforced until 60 calendar days after February 24, 1987. (Feb. 24, 1987, D.C. Law 6-166, § 32, 33 DCR 6710.)

Section references. — This section is referred to in §§ 30-345.1 and 30-346.5.

Legislative history of Law 6-166. — See note to § 30-501.

TITLE 31. EDUCATION AND CULTURAL INSTITUTIONS.

Chapter

1. Board of Education..... §§ 31-101 to 31-122.
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9. Aviation Education in High Schools..... §§ 31-901 to 31-904.
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11. Salaries of Teachers, School Officers and Other Employees..... [Repealed].
12. Retirement of Public School Teachers..... §§ 31-1201 to 31-1271.
13. Interstate Agreement on Qualification of Educational Personnel..... §§ 31-1301 to 31-1304.
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15. Public Postsecondary Education Reorganization. . §§ 31-1501 to 31-1577.
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17. Medical and Dental Colleges..... §§ 31-1701 to 31-1719.
18. Gallaudet College..... §§ 31-1801 to 31-1834.
- 18A. Education for the Deaf..... §§ 31-1841.1 to 31-1843.4.
19. Law School Clinical Programs Funding..... [Repealed].
20. Commission on the Arts and Humanities..... §§ 31-2001 to 31-2006.
21. Museum of the City of Washington..... §§ 31-2101 to 31-2109.
22. Miscellaneous Provisions..... §§ 31-2201 to 31-2219.
23. Compact for Education of the Education Commission of the States..... §§ 31-2301 to 31-2304.
24. Student Health Care..... §§ 31-2401 to 31-2434.
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CHAPTER 1. BOARD OF EDUCATION.

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| <p>Sec.
31-101. Composition; election; term of office; vacancies; meetings.</p> | <p>Sec.
31-102. General policies; expenditures; appointment of employees.</p> |
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Sec.	Sec.
31-103. Annual estimates.	31-113. Head of department; head teacher; class size limitation.
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31-107. Superintendent; appointment; term of office; duties.	31-119. Adoption and use of seal.
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§ 31-101. Composition; election; term of office; vacancies; meetings.

(a) **[Charter Provision].** The control of the public schools in the District of Columbia is vested in a Board of Education to consist of 11 elected members, 3 of whom are to be elected at large, and one to be elected from each of the 8 school election wards established under Chapter 13 of Title 1. The election of the members of the Board of Education shall be conducted on a nonpartisan basis and in accordance with such chapter.

(b)(1) Except as provided in paragraph (3) of this subsection and § 1-1314(e), the term of office of a member of the Board of Education shall be 4 years.

(2) Members may serve more than one term, and may receive compensation at a rate fixed by the Council of the District of Columbia, which shall not exceed the sum provided in § 1-612.10.

(3)(A) The term of office of a member of the Board of Education elected in a general election shall expire at noon of the 30th day after the Board of Elections certifies the result of the election of a successor of that member of the Board of Education. The term of a member of the Board of Education elected in the general election shall begin immediately upon the expiration of the term preceding it.

(B) The terms of office of the members of the Board of Education to be elected in the November, 1985, and November, 1987, general elections shall be as follows:

(i) *1985 Elections:* Five-year terms for the members from Wards II and VIII; and 3-year terms for the member from Ward III and the 2 members at-large.

(ii) *1987 Elections:* Five-year terms for the members from Wards I, V, and VI; and 3-year terms for the members from Wards IV and VII and one member at-large.

(4) Deleted.

(c)(1) Each member of the Board of Education elected from a ward shall at the time of his nomination: (A) be a qualified elector (as that term is defined in § 1-1302) in the school election ward from which he seeks election; (B) have,

for the 90-day period immediately preceding his nomination, resided in the school election ward from which he is nominated; and (C) have, during the 90-day period next preceding his nomination, been an actual resident of the District of Columbia and have during such period claimed residence nowhere else. A member shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) Each member of the Board of Education elected at large shall at the time of his nomination: (A) Be a qualified elector (as that term is defined in § 1-1302) in the District of Columbia; and (B) have, during the 90-day period next preceding his nomination, been an actual resident of the District of Columbia and have during such period claimed residence nowhere else. A member shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(3) No individual may hold the office of member of the Board of Education and: (A) Hold another elective office other than delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice-President of the United States; or (B) also be an officer or employee of the District of Columbia government or of the Board of Education. A member will forfeit his office upon failure to maintain the qualifications required by this paragraph.

(d) Whenever, before the end of his term, a member of the Board of Education dies, resigns, or becomes unable to serve or a member-elect of the Board of Education fails to take office, such vacancy shall be filled as provided in § 1-1314(e).

(e) The Board of Education shall select a President from among its members at the 1st meeting of the Board of Education held on or after the date (prescribed in paragraph (3) of subsection (b) of this section) on which members are to take office after each general election. The Board of Education may appoint a secretary, who shall not be a member of the Board of Education. The Board of Education shall hold stated meetings at least once a month during the school year and such additional meetings as it may from time to time provide for. Meetings of the Board of Education shall be open to the public, except that the Board of Education:

(1) May close to the public any meeting (or part thereof) dealing with the appointment, promotion, transfer, or termination of employment of, or any other related matter involving, any employee of the Board of Education; and

(2) May close to the public any meeting (or part thereof) dealing with any other matter but no final policy decision on such other matter may be made by the Board of Education in a meeting (or part thereof) closed to the public. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Jan. 26, 1929, 45 Stat. 1139, ch. 105; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 2, 1957, 71 Stat. 341, Pub. L. 85-119, § 1; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(a), (c); Dec. 23, 1971, 85 Stat. 795, Pub. L. 92-220, § 3; 1973 Ed., § 31-101; Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 2; Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 495; Aug. 18, 1978, D.C. Law 2-101, § 4, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3204(a), 25 DCR 5740; Sept. 26, 1984, D.C. Law 5-116, § 6, 31 DCR 4018.)

Charter provisions. — Subsection (a) of this section of the D.C. Code is § 495 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1 of the Code.

Cross references. — As to use of official mail by members of Board, see §§ 1-1706 and 1-1707.

As to duties of Board in connection with plans and specifications for school buildings, see § 9-218.

As to Board's jurisdiction and control over school buildings, see Chapter 2 of this title.

As to powers and duties of Board relating to compulsory school attendance and work permits, see Chapter 4 of this title.

As to annual census of children, see § 31-404.

As to free textbooks and school supplies, see Chapter 7 of this title.

As to retirement of public school teachers, see Chapter 12 of this title.

As to powers and duties of Board relating to child labor laws and work permits, see § 36-501 et seq.

Section references. — This section is referred to in §§ 1-299.2, 1-637.1, 31-1401, 31-1421, and 31-1502.

Legislative history of Law 2-101. — Law 2-101 was introduced in Council and assigned Bill No. 2-218, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 2, 1978 and May 16, 1978, respectively. Signed by the Mayor on June 15, 1978, it was assigned Act No. 2-207 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-116. — Law 5-116 was introduced in Council and assigned Bill No. 5-61, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984, and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-168 and transmitted to both Houses of Congress for its review.

Development of comprehensive energy conservation measures. — For provisions regarding development of a comprehensive

plan to identify and accomplish energy conservation measures to achieve maximum cost-effective energy and water savings by the District of Columbia Emergency Transitional Education Board of Trustees, see § 139 of Pub. L. 105-100, 111 Stat. 2178, the District of Columbia Appropriations Act, 1998.

Board members are accountable for the manner in which they perform their duties. Hobson v. Hansen, 265 F. Supp. 902 (D.D.C. 1967), appeal dismissed, 393 U.S. 801, 89 S. Ct. 40, 21 L. Ed. 2d 85 (1968).

Capacity to sue and be sued. — This section does not provide that the Board is a body corporate having the capacity to sue and be sued. Kelley v. Morris, App. D.C., 400 A.2d 1045 (1979).

Standing to challenge authority of Board. — Pupils in public schools administered by the District of Columbia Board of Education and parents of those pupils have sufficient interest to challenge the authority of the Board to administer the schools. Hobson v. Hansen, 265 F. Supp. 902 (D.D.C. 1967), appeal dismissed, 393 U.S. 801, 89 S. Ct. 40, 21 L. Ed. 2d 85 (1968).

Terms of office are "staggered" to ensure smooth transitions in administration. Barry v. District of Columbia Bd. of Elections & Ethics, 448 F. Supp. 1249 (D.D.C.), appeal dismissed, 580 F.2d 695 (D.C. Cir. 1978).

Nonpartisan basis of election. — Subsection (a) of this section does not prohibit a candidate from receiving the approval of a political party and using the benefit of such approval to his advantage. Boone v. Taylor, App. D.C., 256 A.2d 411 (1969).

Congressional intent as to closed meetings. — Given the express intent of Congress to allow certain meetings of the Board of Education to be closed and the embodiment of that intent in subsection (e) of this section, this section acts as a qualification of § 1-1504 which requires that meetings of the District government to be open to the public. Goodwin v. District of Columbia Bd. of Educ., App. D.C., 343 A.2d 63 (1975).

Political party endorsements. — Use of political party endorsements in campaign for seat on the Board of Education was not prohibited under this section. Hawkins v. Butler-Truesdale, App. D.C., 584 A.2d 1241 (1990).

Slating. — Even though the defendant linked her name with those of Democratic party candidates for other offices, she did not engage in "slating." Hawkins v. Butler-Truesdale, App. D.C., 584 A.2d 1241 (1990).

"Related matter". — Although the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the Superintendent of Schools did not terminate the superintendent's employment, the meetings' agenda were unquestion-

ably "related matter" as contemplated by this section and are properly subject to closed sessions. *Goodwin v. District of Columbia Bd. of Educ.*, App. D.C., 343 A.2d 63 (1975).

District has congressionally-imposed responsibility to provide education for its residents; it has no such responsibility for nonresident children. *Fenster v. Schneider*, 636 F.2d 765 (D.C. Cir. 1980).

Suit for damages against Board cannot survive. — Since statute creating the Board of

Education does not provide that the Board is a body corporate having the capability to sue or to be sued, a suit for damages against the Board cannot survive. *Parker v. District of Columbia*, 588 F. Supp. 518 (D.D.C. 1983); *Tschanner v. District of Columbia Bd. of Educ.*, 594 F. Supp. 407 (D.D.C. 1984).

Cited in *District of Columbia v. Gueory*, App. D.C., 376 A.2d 834 (1977).

§ 31-102. General policies; expenditures; appointment of employees.

The Board shall determine all questions of general policy relating to the schools, shall appoint the executive officers hereinafter provided for, define their duties, and direct expenditures. All expenditures of public funds for such school purposes shall be made and accounted for as now provided by law under the direction and control of the Mayor of the District of Columbia. The Board shall appoint all teachers in the manner hereinafter prescribed and all other employees provided for in this chapter. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(b); 1973 Ed., § 31-103.)

Establishment of District of Columbia Advisory Committee on Education. — See Mayor's Order 89-256, November 7, 1989.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Limitation on Board's authority. — The significant changes made by the Financial Responsibility and Management Assistance Act of 1995 in the budget process for the District of Columbia school system demonstrated Congress' intent to limit the Board of Education's fiscal independence. *Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 964 F. Supp. 416 (D.D.C. 1997).

Authority to run schools. — Congress has delegated its plenary power to run the schools of the District to the District of Columbia Financial Responsibility and Management Assistance Authority. *Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 964 F. Supp. 416 (D.D.C. 1997).

The District of Columbia Financial Responsibility and Management Assistance Authority had the statutory authority to transfer most of the powers and duties of the District's elected Board of Education to the Emergency Transitional Education Board of Trustees. *Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 964 F. Supp. 416 (D.D.C. 1997).

Board has an obligation to provide whatever specialized instruction that will benefit a child determined to have behavioral problems, to be mentally retarded, or to be emotionally disturbed or hyperactive. *Mills v. Board of Educ.*, 348 F. Supp. 866 (D.D.C. 1972).

No child eligible for publicly supported education in District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy, or practice of the Board of Education unless the child is provided adequate alternative educational services suited to the child's needs, which may include special education or tuition grants, and a constitutionally adequate prior hearing, and periodic review of child's status, progress, and adequacy of any educational alternative. *Mills v. Board of Educ.*, 348 F. Supp. 866 (D.D.C. 1972).

Failure to do so violates due process. — The conduct of the Board of Education in deny-

ing children, who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, all publicly supported education, while providing such education to other children, violates due process. *Mills v. Board of Educ.*, 348 F. Supp. 866 (D.D.C. 1972).

Due process of law requires a hearing before children, who have been labeled behavioral problems, mentally retarded, emotionally disturbed or hyperactive, are suspended or expelled from regular schooling in publicly supported schools or reassigned for specialized instruction. *Mills v. Board of Educ.*, 348 F. Supp. 866 (D.D.C. 1972).

Equitable expenditure of available funds. — If sufficient funds are not available to finance all of the services and programs that are needed and desirable in a public school system, then the available funds must be expended equitably in such manner that no child is entirely excluded from publicly supported education, consistent with his needs and ability to benefit therefrom. *Mills v. Board of Educ.*, 348 F. Supp. 866 (D.D.C. 1972).

Per pupil expenditures for teachers' salaries and benefits in any elementary school

may not deviate, except for adequate justification, by more than 5 percent from the mean per pupil expenditure for teachers' salaries and benefits at all elementary schools in District. *Hobson v. Hansen*, 327 F. Supp. 844 (D.D.C. 1971).

Collective bargaining. — The duty status of Good Friday and the starting date of the school year fall within the scope of basic work scheduling and terms and conditions of employment under the act. In accordance with the Comprehensive Merit Personnel Act, the teachers have a right to bargain concerning these subjects. *Washington Teachers' Union Local 6 v. District of Columbia*, 115 WLR 1057 (Super. Ct.).

The beginning date of the school year and Good Friday's status as a holiday are not mandatory subjects of collective bargaining between the District of Columbia Public Schools and the Washington Teachers' Union. *Public Employee Relations Bd. v. Washington Teachers' Union Local 6*, App. D.C., 556 A.2d 206 (1989).

§ 31-103. Annual estimates.

The Board of Education shall annually, on or before the 21st day of December, transmit to the Mayor of the District of Columbia an estimate in detail of the amount of money required for the public schools for the ensuing year, and said Mayor shall transmit the same in his annual estimate of appropriations for the District of Columbia, with such recommendations as he may deem proper, except that in the case of a year which is a control year (as defined in § 47-393(4)), the Mayor shall transmit the same together with the Mayor's own request for the amount of money required for the public schools for the year. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(b); 1973 Ed., § 31-104; Oct. 5, 1985, D.C. Law 6-48, § 2, 32 DCR 4583; Apr. 17, 1995, 109 Stat. 116, Pub. L. 104-8, § 202(g)(1).)

Cross references. — As to restrictions on use of appropriated funds, see § 31-2211.

As to inclusion of estimates for repair and improvement of school buildings and grounds, see §§ 47-202 and 47-203.

Legislative history of Law 6-48. — Law 6-48 was introduced in Council and assigned Bill No. 6-252, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-67 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-104. Annual budget [Charter Provision].

With respect to the annual budget for the Board of Education in the District of Columbia, the Mayor and the Council may establish the maximum amount of funds which will be allocated to the Board, but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the various programs under the jurisdiction of the Board of Education. This section shall not apply with respect to the annual budget for any fiscal year which is a control year (as defined in § 47-393(4)). (Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 452; 1973 Ed., § 31-104-1; Apr. 17, 1995, 109 Stat. 116, Pub. L. 104-8, § 202(g)(2).)

Charter provisions. — This section of the D.C. Code is § 452 of the District Charter as enacted by Title IV of the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 820, Pub. L. 93-198. The District of Columbia Self-Government and Governmental Reorganization Act is set out in its entirety in Volume 1.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Definitions applicable. — The definitions contained in § 1-202 apply to this section.

Scope of section. — This section is not limited only to formulation of the budget, be-

fore appropriation. *Barry v. Bush*, App. D.C., 581 A.2d 308 (1990).

Congressional authority is not limited by this section. *District of Columbia v. American Fed'n of Gov't Employees*, App. D.C., 619 A.2d 77, cert. denied, 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312 (1993).

No intrusion upon management. — Neither the City Council nor the Congress, by an Appropriations Act, may intrude upon the Board of Education's management of its own internal affairs. *American Fed'n of Gov't Employees v. District of Columbia*, 120 WLR 2533 (Super. Ct. 1992).

Mayor's powers. — Establishment of the Board of Education's maximum budget must include participation of both the Mayor and the Council and where the Mayor attempted unilaterally to establish a new maximum his actions were in direct violation of the statute. *Barry v. Bush*, App. D.C., 581 A.2d 308 (1990).

The D.C. Appropriations Act, 1990, Public Law 101-168, does not implicitly override this section and empower the Mayor to reduce the Board's appropriations. *Barry v. Bush*, App. D.C., 581 A.2d 308 (1990).

§ 31-104.1. Reductions in budgets of independent agencies.

Recodified.

Editor's notes. — Former § 31-104.1 has been recodified as § 47-304.1.

§ 31-104.2. Annual Board of Education report and budget revision.

(a) *Annual report on positions and employees.* — Hereafter, the Board of Education of the District of Columbia shall annually compile an accurate and verifiable report on the positions and employees in the public school system of the District. The first such annual report shall be verified by independent auditors.

(b) *Required contents of annual report.* — The annual report required by subsection (a) of this section shall set forth:

(1) The number of validated Schedule A positions in the public school system of the District of Columbia for the following fiscal year on a full-time equivalent basis, including a compilation of all positions by control center, responsibility center, funding source, position type, position title, pay plan, grade, and annual salary; and

(2) A compilation of all employees in the public school system of the District of Columbia as of the preceding December 31, verified as to its accuracy in accordance with the functions that each employee is actually performing, by control center, responsibility center, agency reporting code, program (including funding source), activity, location for accounting purposes, job title, grade and classification, annual salary, and position control number.

(c) *Submission of annual report.* —

(1) *First report.* — The first annual report required by subsection (a) of this section shall include the information required by subsection (b)(1) of this section for each of the fiscal years 1993, 1994, and 1995, and shall be submitted to the Congress, and to the Mayor and Council of the District of Columbia, by not later than October 1, 1994.

(2) *Subsequent reports.* — Except as provided in paragraph (1) of this subsection, the annual report required by subsection (a) of this section shall be submitted to the Congress, and to the Mayor and Council of the District of Columbia, by not later than April 15 of each year.

(d) *Annual Budget Revision.* —

(1) *In general.* — Not later than October 1, 1994, and each succeeding year or within 15 calendar days after the date of the enactment of the District of Columbia Appropriations Act for the fiscal year beginning on such October 1 (whichever occurs first), the Board of Education of the District of Columbia shall submit to the Congress, and to the Mayor and Council of the District, a revised appropriated funds operating budget for the public school system of the District for such fiscal year that is in the total amount of the approved appropriation and that realigns budgeted data for personal services and other-than-personal services, respectively, with anticipated actual expenditures.

(2) *Required format.* — The revised budget required by paragraph (1) of this subsection shall be submitted in the format of the budget that the Board of Education of the District of Columbia submits to the Mayor of the District for inclusion in the Mayor's budget submission to the Council of the District pursuant to § 47-301. (Sept. 30, 1994, 108 Stat. 2594, Pub. L. 103-334, § 143; Apr. 9, 1997, D.C. Law 11-255, § 32, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic changes in the introductory language of (a), in (c)(1), (c)(2), and (d)(2).

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 31-105. Exemption from personal liability and security or bond requirement.

The members of the Board of Education of the District of Columbia shall not be personally liable in damages for any official action of the Board performed in good faith in which the members participate; nor shall any member of the Board be liable for any costs that may be taxed against them or the Board on account of any such official action by them as members of the Board; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said Board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Jan. 26, 1929, 45 Stat. 1139, ch. 105; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(b); 1973 Ed., § 31-104a.)

Purpose — The purpose of this section is to allow citizens to serve as Board members without endangering their personal financial security. *Kelley v. Morris*, App. D.C., 400 A.2d 1045 (1979).

Cited in *Parker v. District of Columbia*, 588 F. Supp. 518 (D.D.C. 1983).

§ 31-106. Coordination of municipal programs.

(a) The Board of Education and the Mayor of the District of Columbia shall jointly develop procedures to assure the maximum coordination of educational and other municipal programs and services in achieving the most effective educational system and utilization of educational facilities and services to serve broad community needs. Such procedures shall cover such matters as:

(1) Design and construction of educational facilities to accommodate civic and community activities such as recreation, adult and vocational education and training, and other community purposes;

(2) Full utilization of educational facilities during nonschool hours for community purposes;

(3) Utilization of municipal services, such as police, sanitation, recreational, and maintenance services to enhance the effectiveness and stature of the school in the community;

(4) Arrangements for cost-sharing and reimbursements on school and community programs involving utilization of educational facilities and services; and

(5) Other matters of mutual interest and concern.

(b) The Board of Education may invite the Mayor of the District of Columbia or his designee to attend and participate in meetings of the Board on matters

pertaining to coordination of educational and other municipal programs and services and on such other matters as may be of mutual interest. (Apr. 22, 1968, 82 Stat. 107, Pub. L. 90-292, § 5; 1973 Ed., § 31-104b.)

Section references. — This section is referred to in § 31-201.

Establishment of District of Columbia Advisory Committee on Education. — See Mayor's Order 89-256, November 7, 1989.

Establishment — D.C. State Advisory Council on Adult Education participatory planning committee. — See Mayor's Order 90-179, November 29, 1990.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the Dis-

trict of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-107. Superintendent; appointment; term of office; duties.

The Board shall appoint one Superintendent for all the public schools in the District of Columbia, who shall hold said office for a term of 3 years and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He shall have a seat on the Board and the right to speak on all matters before the Board, but not the right to vote. The Board of Education is authorized to delegate any of its authority to the Superintendent. The Superintendent is authorized to redelegate any of his or her authority subject to the approval of the Board. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d); 1973 Ed., § 31-105; Mar. 3, 1979, D.C. Law 2-139, § 3204(h), 25 DCR 5740.)

Cross references. — As to removal of Superintendent, see § 31-110.

As to excusing children who are regularly employed from school attendance, see § 31-402.

As to annual school census, see §§ 31-404 — 31-406.

As to recommendations for purchase of textbooks and supplies, see § 31-704.

As to ceremonial expenses, see § 31-2214.

As to official expenses, see § 31-2215.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 31-101.

Authority of Board. — Delegation of nearly all of the Board of Education's authority to the Emergency Transitional Education Board of Trustees by the District of Columbia Financial

Responsibility and Management Assistance Authority (the Control Board) was lawful under the Financial Responsibility and Management Assistance Act of 1995 (FRMAA), because this section contemplates that such a delegation would be lawful if undertaken by the Board of Education itself, and the Control Board stood in the shoes of the Board of Education under § 207(d) of the FRMAA. *Shook v. District of Columbia Fin. Responsibility & Mgt. Assistance Auth.*, 964 F. Supp. 416 (D.D.C. 1997).

Employer-employee relationship with Board. — The term "Superintendent" envisions an employer-employee relationship between the Board of Education and the Superintendent of Schools. *Goodwin v. District of Columbia Bd. of Educ.*, App. D.C., 343 A.2d 63 (1975).

§ 31-108. Provisional duties of Superintendent.

The Superintendent of Schools of the District of Columbia is authorized to accept the resignation or the application for retirement of any employee, to grant leave of absence to any employee, to extend or terminate any temporary appointment, and to make all changes in personnel and appointments growing out of such resignation, retirement, leave of absence, termination of temporary appointment, or caused by the decease or suspension of any employee, or the organization of a new class or classes, and to perform such other duties necessary for the operation of the public school system as may be authorized by the Board of Education, provisionally and until the next regular meeting of the Board of Education. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 1; 1973 Ed., § 31-106.)

Section references. — This section is referred to in § 31-109.

§ 31-109. Authority of acting Superintendent.

The authority conferred on the Superintendent of Schools by § 31-108 shall, during his authorized absence, devolve on the person designated as acting Superintendent of Schools. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 2; 1973 Ed., § 31-107.)

§ 31-110. Removal of Superintendent.

The Board shall have power to remove the Superintendent at any time for adequate cause affecting his character and efficiency as Superintendent. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d); 1973 Ed., § 31-108.)

Cited in *Goodwin v. District of Columbia Bd. of Educ.*, App. D.C., 343 A.2d 63 (1975).

§ 31-111. Supervisor of Manual Training.

There shall be appointed by the Board a Supervisor of Manual Training who, under the direction of the Superintendent, shall have supervision of manual training instruction. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d); 1973 Ed., § 31-111.)

§ 31-112. Classification by correlated subjects.

The Board of Education shall classify all academic and scientific subjects in the Central, Eastern, Western, and Business High Schools, and the McKinley Manual Training School into 8 departments so that each department shall contain correlated subjects, and the M Street High School and the Armstrong Manual Training School shall be similarly classified into 4 departments so that each department shall contain correlated subjects. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d); 1973 Ed., § 31-112.)

§ 31-113. Head of department; head teacher; class size limitation.

Whenever a department includes 2 or more high schools, then the teacher in charge of the department shall be designated "head of the department," otherwise the teacher in charge of the department shall be designated "head teacher"; provided, that heads of departments as such have only an advisory capacity in educational matters and upon all questions shall be inferior in authority to the principal of each particular school; provided further, that no class shall be formed in the high schools with less than 10 pupils for a period not longer than 15 days. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5; 1973 Ed., § 31-113.)

§ 31-114. Qualifications required of teachers and officials.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 14, 29 DCR 49.

Legislative history of Law 4-78. — Law 4-78 was introduced in Council and assigned Bill No. 4-326, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1981

and November 24, 1981, respectively. Signed by the Mayor on December 15, 1981, it was assigned Act No. 4-126 and transmitted to both Houses of Congress for its review.

§ 31-115. Investigation or trial of teacher.

When a teacher is on trial or being investigated he or she shall have the right to be attended by counsel and by at least one friend of his or her selection. (June 20, 1906, 34 Stat. 321, ch. 3446, § 10; 1973 Ed., § 31-116.)

§ 31-116. Masculine pronoun to include both male and female.

Wherever the masculine pronoun occurs in this chapter it shall be construed to apply to either male or female teachers or employees of the Board of Education. (June 20, 1906, 34 Stat. 321, ch. 3446, § 12; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d); 1973 Ed., § 31-117.)

§ 31-117. Normal schools.

The Board of Education shall have power to make all necessary rules and regulations for the organization and government of the normal schools, to prescribe the course of study to be pursued therein, and to fix terms for the admission and graduation of pupils; provided, that the Board of Education is hereby authorized, under appropriations hereafter to be made, to expand the 2 existing normal schools into teachers' colleges, and at the end of the 4th year thereof to award appropriate degrees. (June 23, 1873, p. 50, ch. 8, § 3; Feb. 25, 1929, 45 Stat. 1276, ch. 314, § 1; 1973 Ed., § 31-118.)

Section references. — This section is referred to in § 31-1403.

Cited in Cavanagh v. Ballou, 36 F. Supp. 445 (D.D.C. 1941).

§ 31-118. Education of pages.

The Board of Education of the District of Columbia is hereby authorized to employ such personnel for the education of pages as may be required and to pay compensation for such services in accordance with such rates of compensation as the Board of Education may prescribe. (July 10, 1972, 86 Stat. 441, Pub. L. 92-342, § 101; 1973 Ed., § 31-121; Aug. 5, 1977, 91 Stat. 671, Pub. L. 95-94, title I.)

§ 31-119. Adoption and use of seal.

The Board of Education of the District of Columbia is hereby authorized to adopt, alter and use a seal which shall be judicially noticed, and to prescribe rules and regulations as may be deemed necessary to implement this section. (1973 Ed., § 31-122; Aug. 2, 1978, D.C. Law 2-96, § 2, 25 DCR 1272.)

Legislative history of Law 2-96. — Law 2-96 was introduced in Council and assigned Bill No. 2-111, which was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and

second readings on April 18, 1978, and May 2, 1978, respectively. Signed by the Mayor on May 26, 1978, it was assigned Act No. 2-200 and transmitted to both Houses of Congress for its review.

§ 31-120. Power to raze buildings; limitations.

The Board of Education, upon the approval of the Mayor, and with the consent of the Council by resolution, shall have the power to raze structures. The razing of any building, structure, or part of any building or structure that is on the National Register of Historic Places, the District of Columbia inventory of historic sites, or for which application for one of these listings is pending, shall not be approved. Any contract services required to carry out this purpose shall be procured through the Office of Contracting and Procurement. (June 20, 1906, ch. 3446, § 14, as added Sept. 11, 1990, D.C. Law 8-158, § 3, 37 DCR 4167; Apr. 12, 1997, D.C. Law 11-259, § 311, 44 DCR 1423.)

Effect of amendments. — D.C. Law 11-259 added the last sentence.

Legislative history of Law 8-158. — Law 8-158 was introduced in Council and assigned Bill No. 8-383, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its

review. D.C. Law 11-259 became effective on April 9, 1997.

Authorization to charge fees for educational courses. — For temporary authorization of the District of Columbia Board of Education to charge fees for select adult, community, and continuing education courses, see §§ 2-5 of the District of Columbia Board of Education Fees for Select Adult, Community, and Continuing Education Courses Emergency Act of 1994 (D.C. Act 10-299, July 25, 1994, 41 DCR 5186).

Sections 2 - 5 of D.C. Law 10-192 provided for the temporary authorization of the District of Columbia Board of Education to charge fees for select adult, community, and continuing education courses. Section 6(b) of D.C. Law 10-192 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Board of Education Fees for Select Adult, Community,

and Continuing Education Courses Act of 1994, whichever occurs first.

Compilation of inventories. — For temporary provisions directing the Board of Education to compile each year accurate and verifiable inventories of both positions and employees, see § 701 of the Second Omnibus

Budget Support Emergency Act of 1994 (D.C. Act 10-226, April 14, 1994, 41 DCR 2113).

For provisions directing the Board of Education to compile each year accurate and verifiable inventories of both positions and employees, see § 701 of D.C. Law 10-128.

§ 31-121. Contracting out of food services operations and security services; development of management and data systems.

(a) Notwithstanding any other law, rule, or regulation, the District of Columbia Board of Education shall contract out, beginning in School Year 1995-96 and Fiscal Year 1996, all food services operations and security services for the D.C. Public Schools unless the Superintendent determines that it is not feasible.

(b) Notwithstanding any other law, rule, or regulation, the District of Columbia Board of Education shall contract out for no more than a 3-year period, beginning in School Year 1995-96 and Fiscal Year 1996, the development of new management and data systems, as well as training of currently employed personnel to use and manage these systems, in the areas of budget, finance, personnel/human resources, management information services, procurement, and supply management. (March 5, 1996, D.C. Law 11-98, § 1203, 43 DCR 5.)

Legislative history of Law 11-78. — Law 11-78, the “Budget Support Temporary Act of 1995,” was introduced in Council and assigned Bill No. 11-421. The Bill was adopted on first and second readings on July 29, 1995, and October 10, 1995, respectively. Signed by the Mayor on October 31, 1995, it was assigned Act No. 11-150 and transmitted to both Houses of Congress for its review. D.C. Law 11-78 became effective on January 26, 1996.

Legislative history of Law 11-98. — Law

11-98, the “Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-440, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 26, 1995, it was assigned Act No. 11-181 and transmitted to both Houses of Congress for its review. D.C. Law 11-98 became effective on March 5, 1996.

§ 31-122. Detail of officers to training program.

Pursuant to section 101(1)(c) and (d) of the Reserve Officers’ Training Corps Vitalization Act of 1964, approved October 13, 1964 (78 Stat. 1063; 10 U.S.C. 2031(c) and (d)), the Board of Education, beginning in the 1995-96 School Year, shall request and ensure that active duty officers and noncommissioned officers of the U.S. Armed Forces be detailed as administrators and instructors to the District of Columbia Public Schools’ Junior Reserve Officers’ Training Corps program. (March 5, 1996, D.C. Law 11-98, § 1204, 43 DCR 5.)

Emergency act amendments. — For temporary addition of section, see § 1405 of the Budget Support Emergency Act of 1995 (D.C. Act 11-137, August 14, 1995, 42 DCR 4706) § 1405 of the Budget Support Legislative Re-

view Emergency Act of 1995 (D.C. Act 11-154, November 9, 1995, 42 DCR 6569), and § 1204 of the Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-206, February 9, 1996, 43 DCR 777).

Legislative history of Law 11-78. — See
note to § 31-121.

Legislative history of Law 11-98. — See
note to § 31-121.

CHAPTER 1A. FEES FOR SELECT ADULT, COMMUNITY, AND CONTINUING EDUCATION COURSES.

Sec.

31-131. Definitions.

31-132. Fees for select District of Columbia Board of Education adult, commu-

Sec.

nity, and continuing education courses.

31-133. Accountability for funds received.

§ 31-131. Definitions.

For purposes of this chapter, the phrase "Select Adult, Community, and Continuing Education Course" means an adult, community, and continuing education course which is either recreational or vocational in nature. (Mar. 16, 1995, D.C. Law 10-221, § 2, 41 DCR 8047.)

Legislative history of Law 10-221. — Law 10-221, the "District of Columbia Board of Education Fees for Select Adult, Community, and Continuing Education Courses Act of 1994," was introduced in Council and assigned Bill No. 10-656, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-358 and transmitted to both Houses of Congress for its review. D.C. Law 10-221 became effective on March 16, 1995.

Legislative history of Law 11-49. — Law 11-49, the "District of Columbia Board of Edu-

cation Fees for Adult, Community, and Continuing Education Courses Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-309. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 6, 1995, it was assigned Act No. 11-91 and transmitted to both Houses of Congress for its review. D.C. Law 11-49 became effective on September 20, 1995.

Board of Education may issue rules. — Section 5 of D.C. Law 10-358 provided that the Board of Education, pursuant to subchapter I of Chapter 15 of Title 1, shall issue rules to implement the provisions of this chapter.

§ 31-132. Fees for select District of Columbia Board of Education adult, community, and continuing education courses.

(a) The District of Columbia Board of Education ("Board of Education") is authorized to charge fees for all adult, community, and continuing education courses, and for employee certification and recertification and certification of university teacher education programs, provided that no additional fees shall be charged for ongoing courses in Academic Year 1994-1995 and Fiscal Year 1995 until those courses are completed.

(b) The amount which shall be charged with respect to each select adult, community, and continuing education course shall be fixed annually by the Board of Education as the amount necessary to cover the expense of instruction, cost of textbooks and school supplies, and other operating costs associated with each course offered; provided, that such an amount and changes in the amount fixed by this subsection are set by the Board of Education in accordance with § 1-1506. Following the final adoption of such amounts, the Board of Education shall transmit a copy to the Mayor and a copy to the Council of the District of Columbia.

(c) All amounts received by the Board of Education under this section shall be paid to the D.C. Treasurer and accounted for in the General Fund as a

separate revenue source allocable to provide authority for the offering of select adult, community, and continuing education courses for which fees will be charged.

(d) As part of its fiscal year 1995 Supplemental Budget, the Board of Education shall request that an amount equal to the fees collected and deposited into the General Fund pursuant to this chapter, be appropriated to the Board of Education for the purpose of paying for instructors' salaries, textbooks and supplies, and other operating costs associated with offering select adult, community, and continuing education courses.

(e) Waivers, in whole or in part, of fees for select adult, community, and continuing education courses may be granted by the Board of Education only to District residents, regardless of an individual's or a student's employment status with the Board or the District of Columbia Public Schools. (Mar. 16, 1995, D.C. Law 10-221, § 3, 41 DCR 8047; March 5, 1996, D.C. Law 11-98, § 1201, 43 DCR 5; Apr. 9, 1997, D.C. Law 11-255, § 55(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-98 rewrote (a).

D.C. Law 11-255 validated a previously made technical correction to the text of D.C. Law 11-98, § 1201 with no effect on the text of this section.

Legislative history of Law 10-221. — See note to § 31-131.

Legislative history of Law 11-49. — See note to § 31-131.

Legislative history of Law 11-78. — See note to § 31-121.

Legislative history of Law 11-98. — See note to § 31-121.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 31-133. Accountability for funds received.

The District of Columbia Board of Education shall account for all funds received pursuant to this chapter. (Mar. 16, 1995, D.C. Law 10-221, § 4, 41 DCR 8047.)

Legislative history of Law 10-221. — See note to § 31-131.

CHAPTER 2. USE OF SCHOOL BUILDINGS.

Sec.

31-201. Control of school buildings; disposition of proceeds.

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31-201.2. Public liability insurance.

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Sec.

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31-207. Property exclusively for school purposes.

31-208. Utilization of Business High School building.

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§ 31-201. Control of school buildings; disposition of proceeds.

(a) The control of the public schools in the District of Columbia by the Board of Education shall extend to include the negotiation and approval of use, license, and lease agreements, with or without monetary consideration, with respect to the use of public school buildings and parts thereof and the grounds appurtenant thereto, and land intended for such use, by or for any of the following:

(1) Any agency or agencies of the District of Columbia government, the United States government, or any international organization;

(2) Any person or organization providing an educational or recreational program involving students of the public schools, other children, youth, or adults;

(3) Any person or organization providing a supplementary educational program;

(4) Any person or organization conducting civic meetings for the free discussion of public questions;

(5) Any person or organization operating a social center, including, but not limited to, the following:

(A) A preschool center, child development center, or day care center;

(B) A health clinic or a counseling service;

(C) A community service program;

(D) A community-based consumer cooperative; or

(E) A studio or workshop for instruction, display, performance or promotion of the arts, or for other art-related purposes;

(6) A playground or center for recreational activity; or

(7) Any other use which the Board of Education may deem to be compatible with the normal use of the particular property and in the best interest of the local community, other than industrial uses, and which does not require major structural renovations at cost to the District of Columbia government to implement a particular agreement.

(b) In the execution of subsection (a) of this section, preference shall be given to agencies of the District of Columbia government.

(c) All fees and proceeds derived from licenses or use agreements entered into pursuant to this section and §§ 31-201.1 and 31-201.2 shall be paid to the Treasury of the District of Columbia, under regulations issued by the Mayor,

and accounted for in the General Fund as a separate revenue source allocable to provide authority for the Board of Education to expend for the custody, cleaning, heating, air-conditioning, lighting, maintenance, security, and improvement of public school buildings and grounds, and the management of these licenses and use agreements. Any unobligated balance remaining 90 days subsequent to the end of the fiscal year in which the revenues were received shall be transferred by the Board of Education to the debt service fund to be applied toward the repayment of capital outlay loans and interest outstanding on public school buildings and grounds acquired and held for school purposes, pursuant to § 1-105 over and above the amount appropriated by the Congress of the United States to the District of Columbia for such purposes.

(c-1) All proceeds received by the Board of Education for leasing school buildings shall be deposited into the Board of Education Real Property Improvement and Maintenance Fund established by the Board of Education Real Property Disposal Act of 1990.

(d) The authority of the Board of Education pursuant to this section shall be in addition to, and not in derogation of, the authority granted to the Board of Education by § 31-106 and by §§ 8-212, 8-223, and 8-224, insofar as these provisions relate to the use of buildings and grounds under the control of the Board of Education.

(e) The Board of Education shall, in accordance with subchapter I of Chapter 15 of Title 1, issue rules for the consideration and review of applications for the use of public school buildings and grounds by lease or otherwise, pursuant to this section. Final approval of each lease, license, or use agreement entered into by the Board of Education pursuant to this section and §§ 31-201.1 and 31-201.2 shall be reserved to the Board of Education which may delegate to the Superintendent any of its authority. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 1; 1973 Ed., § 31-801; Sept. 29, 1982, D.C. Law 4-158, §§ 2, 5, 29 DCR 3632; Sept. 11, 1990, D.C. Law 8-158, § 5, 37 DCR 4167.)

Section references. — This section is referred to in § 31-201.1.

Temporary amendment of section. — Section 4 of D.C. Law 11-215 amended subsection (c-1) to read as follows:

“(c-1) All proceeds received by the Board of Education for leasing school properties, including payments in lieu of taxes, shall be deposited into the Board of Education Real Property Improvement and Maintenance Fund established by § 9-402(b)(1), and shall be available for expenditure, for the purposes set forth in that chapter until actually expended.”

Section 7(b) of D.C. Law 11-215 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 4 of the Oyster Elementary School Modernization and Development Project Emergency Act of 1996 (D.C. Act 11-385, August 28, 1996, 43 DCR 4799), and § 4 of the Oyster Elementary School

Modernization and Development Project Congressional Adjournment Emergency Act of 1996 (D.C. Act 11-437, December 4, 1996, 44 DCR 104).

Section 7 of D.C. Act 11-437 provides for the application of the act.

Legislative history of Law 4-158. — Law 4-158, “District of Columbia Board of Education Leasing Authority Act of 1982,” was introduced in Council and assigned Bill No. 4-223, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 22, 1982, and July 6, 1982, respectively. Signed by the Mayor on July 29, 1982, it was assigned Act No. 4-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-158. — Law 8-158 was introduced in Council and assigned Bill No. 8-383, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-215. — Law 11-215, the “Oyster Elementary School Modernization and Development Project Temporary Act of 1996,” was introduced in Council and assigned Bill No. 11-828. The Bill was adopted on first and second readings on July 17, 1996,

and October 1, 1996, respectively. Signed by the Mayor on October 15, 1996, it was assigned Act No. 11-413 and transmitted to both Houses of Congress for its review. D.C. Law 11-215 became effective on April 9, 1997.

References in text. — The “Board of Education Real Property Disposal Act of 1990”, referred to in subsection (c-1), is D.C. Law 8-158.

§ 31-201.1. Annual report.

The Board of Education shall submit to the Mayor of the District of Columbia and the Council of the District of Columbia, not later than January 15th of each year, a report covering all activities with respect to public school buildings and grounds that were undertaken during the preceding fiscal year pursuant to the authority granted by this section and §§ 31-201 and 31-201.2. Such report shall include, but shall not be limited to:

(1) All lease, use, or other agreements exceeding a period of 30 days, indicating the name of the tenant and the terms and conditions of the agreement;

(2) An itemization of all collections and expenditures associated with each agreement;

(3) A statement of the actual amount of funds transferred by the Board of Education towards the repayment of capital outlay loans and interest outstanding;

(4) A statement of the actual condition of major structural components of each property under an agreement, and any repairs or improvements made thereto;

(5) A list, including each parcel, of real property transferred by the Board of Education to the Department of General Services and the date of each transfer; and

(6) A statement by the Board of Education of benefits and enhancements to the educational environment and the community resulting from the authority granted by this section and §§ 31-201 and 31-201.2, and recommendations, if any, for the improvement thereof. (Sept. 29, 1982, D.C. Law 4-158, § 3, 29 DCR 3632.)

Section references. — This section is referred to in § 31-201.

Legislative history of Law 4-158. — See note to § 31-201.

Transfer of functions. — The functions of the Department of General Services were

transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

§ 31-201.2. Public liability insurance.

The Board of Education may by regulation require persons and organizations, other than District of Columbia and federal agencies, holding use agreements or lease agreements with the Board of Education to carry public liability insurance including protection of the interests of the District of

Columbia and its officers, employees, and agents, and the Board of Education and its members, officers, employees, and agents, with respect to claims for personal injuries and other damages allegedly occurring at properties where these leases or use agreements exist. (Sept. 29, 1982, D.C. Law 4-158, § 4, 29 DCR 3632.)

Section references. — This section is referred to in §§ 31-201 and 31-201.1.

Legislative history of Law 4-158. — See note to § 31-201.

§ 31-202. Control of school construction and repairs.

The Director of the Department of Consumer and Regulatory Affairs (“Director”) shall have the same authority, control over, and supervision of the construction or repair of a public school building as the Director has of the construction or repair of any privately owned building. (Mar. 3, 1879, 20 Stat. 408, ch. 182; 1973 Ed., § 31-803; June 22, 1990, D.C. Law 8-143, § 4, 37 DCR 2972.)

Cross references. — As to requirement that janitors make minor repairs, see § 31-2203.

Legislative history of Law 8-131. — Law 8-131 was introduced in Council and assigned Bill No. 8-529. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Signed by the Mayor on March 27, 1990, it was assigned Act No. 8-183 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-143. — Law

8-143 was introduced in Council and assigned Bill No. 8-504, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 26, 1990, it was assigned Act No. 8-199 and transmitted to both Houses of Congress for its review.

Cited in *McBride v. Ross*, 13 App. D.C. 576 (1898).

§ 31-203. Use of Franklin School for office purposes.

The Board of Education is authorized to use all necessary floor and room space in the Franklin School Building for office purposes. (Mar. 3, 1917, 39 Stat. 1026, ch. 160; June 5, 1920, 41 Stat. 855, ch. 234; Feb. 26, 1925, 43 Stat. 993, ch. 342, § 5; 1973 Ed., § 31-804.)

§ 31-204. Restriction on lot 14 in square 263.

The lot of land marked upon the plan of the City of Washington as lot No. 14, in square No. 263, which was conveyed to said City by the Commissioner of Public Buildings, under authority of an Act of Congress dated June 5, 1860, for the use of the public schools in said City, shall not be sold, assigned or conveyed or diverted, for any other purpose except as provided in § 31-205. (R.S., D.C., § 317; 1973 Ed., § 31-805.)

§ 31-205. Sale of part of lot 14 in square 263.

The proceeds of that portion of lot No. 14, in square No. 263, which was authorized to be sold by an Act of Congress dated June 4, 1872, shall be

invested by the authorities of the District in another lot or part of a lot in the City of Washington, and in improvements thereon; and the property so purchased shall be used for the purpose of the public schools, and for no other purpose. (R.S., D.C., § 318; 1973 Ed., § 31-806.)

Section references. — This section is referred to in § 31-204.

§ 31-206. Certain land granted for colored schools to revert to United States.

The lots of land No. 1, 2 and 18, in square No. 985, in the City of Washington, which were designated and set apart by the Secretary of the Interior to be used for colored schools, and conveyed to the trustees of colored schools for the Cities of Washington and Georgetown, by the Commissioner of Public Buildings, under authority of an Act of Congress dated July 28, 1866, for the sole use of schools for colored children in the District of Columbia, shall, if converted to other uses, revert to the United States. (R.S., D.C., § 319; 1973 Ed., § 31-807.)

§ 31-207. Property exclusively for school purposes.

That parcel of land marked and designated upon the map of the City of Washington as part of lot No. 11, in square No. 141, beginning at the northwest corner of said lot, and running thence due south on the west line of said square, 50 feet; thence due east, 30 feet; thence due north, 50 feet; thence due west on the north line of said square, to the point of beginning, and also that piece of land marked and designated upon said map as a public reservation, located between 8th and 9th Streets and K Street and Virginia Avenue Southeast, known as the Anacostia engine house, together with the buildings and improvements thereon, are severally set apart and appropriated for the use of the public schools in the City of Washington, so long as they shall be occupied for that purpose, and no longer. (R.S., D.C., § 320; 1973 Ed., § 31-808.)

§ 31-208. Utilization of Business High School building.

Upon completion of the Roosevelt (Business) High School the building now occupied by the Business High School shall be utilized for senior high and elementary school purposes. (Feb. 23, 1931, 46 Stat. 1395, ch. 282, § 1; 1973 Ed., § 31-809.)

§ 31-209. Entrances to school buildings.

On and after June 28, 1944, appropriations for the District of Columbia shall not be used for the maintenance of school in any building unless all outside doors thereto used as exits or entrances shall open outward and be kept unlocked every school day from one-half hour before until one-half hour after school hours. (June 28, 1944, 58 Stat. 515, ch. 300, § 1; 1973 Ed., § 31-812.)

Temporary Oyster Elementary School modernization and development project.

— Section 2 of D.C. Law 11-215 provided:

"Sec. 2. Definitions.

For purposes of this chapter, the terms:

(1) "Board" means the Board of Education of the District of Columbia.

(2) "Council" means the Council of the District of Columbia.

(3) "District" means the District of Columbia Government.

(4) "Mayor" means the Mayor of the District of Columbia.

(5) "Payments in lieu of taxes" means payments into the Board of Education Real Property Improvement and Maintenance Fund, established by § 9-402(b)(1), of the equivalent of Class II property taxes at 100% of the assessed valuation of the privately owned building or structure occupying any portion of the Oyster School site.

(6) "Privately owned structure" means any building or structure not owned by the District of Columbia government or any of its agencies that is erected on the Oyster School site under a long-term lease or other agreement between a developer and the District of Columbia Public Schools."

Section 3 of D.C. Law 11-215 provided:

"Sec. 3. Authorization of private development of the Oyster Elementary School site.

(a) The Board of Education, pursuant to § 31-201, is authorized to enter into a long-term land lease for private development of part of the James F. Oyster Elementary School site. Pursuant to § 31-201(c), all proceeds derived from the private development, including payments in lieu of taxes ("PILOTS"), shall be deposited into the Board of Education Real Property Improvement and Maintenance Fund. Any proceeds which remain after paying the costs of modernizing Oyster Elementary School shall be used for repair, modernization and improvements of other school system facilities.

(b) Privately owned or used structure,

erected or constructed on the Oyster School site, shall annually pay in lieu of taxes an amount that is equivalent to Class II property taxes at 100% of the assessed valuation of the privately owned or used structure."

Section 5 of D.C. Law 11-215 provided that "the Mayor, or in a control year, the Chief Financial Officer on behalf of the Mayor, shall issue rules to implement the provisions of this act. The rules shall be submitted to the Council of the District of Columbia within 60 days of enactment of this act."

Section 7(b) of D.C. Law 11-215 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary authorization, on an emergency basis, to privately develop a portion of the James F. Oyster School site, and to fund improvements to the Oyster School and other public school facilities through payments in lieu of taxes on the privately developed portion of the Oyster School site and for the issuance of rules to implement these provisions, see §§ 2, 3, and 5 of the Oyster Elementary School Modernization and Development Project Emergency Act of 1996 (D.C. Act 11-385, August 28, 1996, 43 DCR 4799) and §§ 2, 3, and 5 of the Oyster Elementary School Modernization and Development Project Congressional Adjournment Emergency Act of 1996 (D.C. Act 11-437, December 4, 1996, 44 DCR 104).

Section 7 of D.C. Act 11-437 provides for the application of the act.

Legislative history of Law 11-215. — Law 11-215, the "Oyster Elementary School Modernization and Development Project Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-828. The Bill was adopted on first and second readings on July 17, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 15, 1996, it was assigned Act No. 11-413 and transmitted to both Houses of Congress for its review. D.C. Law 11-215 became effective on April 9, 1997.

CHAPTER 3. DEPARTMENT OF GENERAL SERVICES.

Sec.

31-301. Established; functions; duties; Director; advisory board.

31-302. Working capital fund; rules and regulations.

Sec.

31-303. Termination.

§ 31-301. Established; functions; duties; Director; advisory board.

There is hereby established in the municipal government of the District of Columbia the Department of General Services, hereinafter referred to as the "Department," which shall under the direction of the Mayor of the District of Columbia carry out in the District of Columbia the state functions contemplated by § 484(j) and (k) of Title 40, United States Code, and such other duties relating to the distribution of surplus property, or other functions, as the Mayor may in his discretion assign to such Department, and for the purposes of § 484(j), the District of Columbia shall be deemed to be a state. The Mayor is authorized to appoint a Director for such Department and such other personnel as may be necessary with compensation to be fixed in accordance with Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code. The Mayor is also authorized to appoint an advisory board for such Department to be composed of not more than 10 members; provided, that the membership of such board shall include representatives of the tax-supported, tax-exempt, and nonprofit educational institutions in the District of Columbia; and provided further, that the members of such advisory board shall serve without compensation and at the pleasure of the Mayor. Such advisory board may submit reports and recommendations to the Mayor as well as to the Department. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 1; 1973 Ed., § 31-1301.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Educational Agency for Surplus Prop-

erty abolished. — The District of Columbia Educational Agency for Surplus Property was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the District of Columbia Educational Agency for Surplus Property including the functions of all officers, employees, and subordinate agencies were transferred to Director of the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952 and effective September 2, 1952. Reorganization Order No. 18 abolished the District of Columbia Educational Agency for Surplus Property and transferred its functions to the Administrative Services Office created in the Department of General Administration by that Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by Reorganization Plan No. 3 of 1967. Reorganization Order No. 18 was revoked by Organization Order No. 3, dated December 13, 1967, and

functions relative to education surplus property were assigned to the Administrative Services Office of the Department of General Administration by Part IVA of Organization Order No. 3. Functions stated in Parts IVA and IVD of Organization Order No. 3 were transferred to the Director of the Department of General Services by Commissioner's Order No. 69-96, dated March 7, 1969.

The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

Council's acceptance of plan of operation for surplus federal property. — Pursuant to Resolution 6-241, the "District of Columbia Plan of Operation for Surplus Federal

Property Acceptance Resolution of 1985," effective July 9, 1985, the Council accepted the permanent plan of operation for disposition of surplus federal property.

Rescission of Old Police Precinct #9 from surplus real estate list. — Pursuant to Resolution 6-516, the "Sale of Surplus Real Estate Removal Resolution of 1985," effective January 28, 1986, the Council rescinded its findings regarding the property known as the Old Police Precinct #9, located at 525 9th Street, N.E., which appeared on the surplus real estate list established by Resolution 4-171.

Director authorized to negotiate real estate sales contracts. — The authority to negotiate contracts for the sale of real estate lies with the Director of the Department of General Services. *District of Columbia v. McGregor Properties, Inc.*, App. D.C., 479 A.2d 1270 (1984).

§ 31-302. Working capital fund; rules and regulations.

There is hereby authorized to be appropriated from any money in the Treasury to the credit of the District of Columbia not exceeding \$15,000 as a working capital fund for the operation of the Department, which fund shall be used as a permanent revolving fund for all necessary expenses of such Department. There shall be deposited to the credit of such fund such amounts as may be appropriated pursuant to this chapter, together with such amounts as the respective branches of the government of the District of Columbia and the private educational institutions authorized by law to participate in the distribution of surplus property shall pay as fees for services rendered by the Department. The Mayor is authorized to promulgate rules and regulations governing the manner in which the Department shall carry out its duties, including the fixing of reasonable fees to be charged for its services. (Aug. 16, 1950, 64 Stat. 450, ch. 720, § 2; 1973 Ed., § 31-1302; Aug. 1, 1979, D.C. Law 3-13, § 2, 25 DCR 10563.)

Legislative history of Law 3-13. — Law 3-13 was introduced in Council and assigned Bill No. 3-50, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979, and May 22, 1979, respectively. Signed by the Mayor on June 8, 1979, it was assigned Act No. 3-50 and transmitted to both Houses of Congress for its review.

Educational Agency for Surplus Property abolished. — See note to § 31-301.

Transfer of unexpended balances. — Section 7(g) of the Act of June 14, 1980, D.C. Law 3-70, provided for the transfer to the Department of General Services Internal Service Fund, or successor fund established by the Mayor, any unexpended balances in the Educational Surplus Property Fund.

§ 31-303. Termination.

The authority of the Department and of the advisory board shall terminate upon direction of the Mayor of the District of Columbia and in any event no later than the repeal of § 484(j) and (k) of Title 40, United States Code. Upon such termination, the assets of the Department shall be disposed of as the

Mayor may direct. (Aug. 16, 1950, 64 Stat. 451, ch. 720, § 3; 1973 Ed., § 31-1303.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Educational Agency for Surplus Property abolished. — See note to § 31-301.

CHAPTER 4. COMPULSORY SCHOOL ATTENDANCE.

Subchapter I. General Provisions.

Sec.

31-401. Definitions.

31-402. Establishment of school attendance requirements.

31-402.1. Authority of police over truant child.

31-403. Enforcement; penalties.

31-404. Census of minors.

31-405. Report of enrollments and withdrawals.

31-406. Penalty for failure to provide correct information.

Sec.

31-407 to 31-410. [Transferred].

31-411, 31-412. [Repealed].

31-413. Court jurisdiction.

Subchapter II. Expulsion of Students Who Bring Weapons Into Public Schools.

31-451. Expulsion of students.

31-452. Reference to criminal justice or juvenile delinquency system.

31-453. Alternative educational programs.

31-454. Definitions.

Subchapter I. General Provisions.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Laws 11-173 and 11-174, the preexisting text of this

chapter, §§ 31-401 through 31-413, has been designated as subchapter I of this chapter.

§ 31-401. Definitions.

For the purposes of this subchapter, the term:

(1) "Board" means the District of Columbia Board of Education.

(2) "District" means the District of Columbia.

(3) "Minor" means a person who has not reached 18 years of age, pursuant to § 30-401.

(4) "School year" means the period, established by the Board, from the opening of regular school programs, typically in September, until the closing of regular school programs, typically in June. (Feb. 4, 1925, ch. 140, Art. I, § 1, as added Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Cross references. — As to annual census of children, see §§ 31-404 — 31-406.

As to child labor and working permits, see Chapter 5 of Title 36.

Section references. — This section is referred to in §§ 31-413 and 31-2852.

Legislative history of Law 8-247. — Law 8-247 was introduced in Council and assigned Bill No. 8-239, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-331 and transmitted to both Houses of Congress for its review.

Constitutionality. — This is not unconstitutionally vague because a reasonable person exercising common sense would have no doubt as to the prohibitions contained therein. *District of Columbia v. Brown*, 124 WLR 1965 (Super. Ct. 1996).

Truancy not an offense. — The D.C. Code does not include an offense designated as "tru-

ancy" and does not otherwise make it an "offense" for a child to be absent from school, and the police have no direct statutory authority to lawfully stop and question juveniles in the District of Columbia solely on suspicion of possible truancy. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Because there is no truancy offense in the D.C. Code, the police cannot lawfully detain juveniles to determine if they are engaging in a "delinquent act" by being out of school. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Where police made a Terry stop based solely on "suspected truancy", they lacked a basis to reasonably suspect that the defendant was engaged in wrongdoing since an act of "truancy" by a juvenile is not unlawful in the District of Columbia. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

No private right of action for negligent noncompliance. — The Compulsory School Attendance Laws and the regulations that implemented them did not create a private right

of action for damages for negligent noncompliance with their directives. *Brantley v. District of Columbia*, 121 WLR 97 (Super. Ct. 1992).

§ 31-402. Establishment of school attendance requirements.

(a) Every parent, guardian, or other person, who resides permanently or temporarily in the District during any school year and who has custody or control of a minor who has reached the age of 5 years or will become 5 years of age on or before December 31st of the current school year shall place the minor in regular attendance in a public, independent, private, or parochial school, or in private instruction during the period of each year when the public schools of the District are in session. This obligation of the parent, guardian, or other person having custody extends until the minor reaches the age of 18 years. For the purpose of this section placement in summer school is not required.

(b) Any minor who has satisfactorily completed the senior high school course of study prescribed by the Board and has been granted a diploma that certifies his or her graduation from high school, or who holds a diploma or certificate of graduation from another course of study determined by the Board to be at least equivalent to that required by the Board for graduation from the public senior high schools, shall be excused from further attendance at school.

(c) Any minor who has reached the age of 17 years may be allowed flexible school hours by the Superintendent of Schools provided he or she is actually, lawfully, gainfully, and regularly employed, but in no case shall he or she be excused entirely from regular attendance or excused to the extent that his or her timely graduation would be jeopardized or prevented.

(d) The Board shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to establish requirements to govern acceptable credit for studies completed at independent or private schools and private instruction, to govern the validity of applications for permission to be absent from school, to govern the selection and appointment of appropriate staff members to carry out the provisions of this chapter under the direction of the Superintendent of Schools, pursuant to Chapter 6 of Title 1, and in respect to other matters within the scope of authority of the Board that relates to this subchapter. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, §§ 1, 2; 1973 Ed., §§ 31-201, 31-202; renumbered as Art. II, § 1 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Cross references. — As to other powers and duties of Superintendent, see § 31-107.

Section references. — This section is referred to in §§ 31-403, 31-406, 31-413, 31-2852, and 16-2309.

Legislative history of Law 8-247. — See note to § 31-401.

Constitutionality. — This chapter, (now this subchapter) is not unconstitutionally vague because a reasonable person exercising common sense would have no doubt as to the prohibitions contained therein. *District of Columbia v. Brown*, 124 WLR 1965 (Super. Ct. 1996).

§ 31-402.1. Authority of police over truant child.

(a) A law enforcement officer shall take into custody any child who the law enforcement officer has reasonable grounds to believe, based on the child's age and other factors, is truant from a public, independent, private, or parochial

school on a day when such public, independent, private, or parochial school is in session, and shall deliver that child to the appropriate public, independent, private, or parochial school or to a place mutually agreed upon by the Metropolitan Police Department and the District of Columbia Board of Education.

(b) On the request of a person who has reached the age of 18 years, graduated from high school, or received a general equivalency diploma, and who has previously been taken into custody pursuant to subsection (a) of this section, the Metropolitan Police Department shall seal all records relating to custody authorized by subsection (a) of this section. (Feb. 4, 1925, ch. 140, Art. II, § 6, as added Aug. 25, 1994, D.C. Law 10-159, § 3, 41 DCR 4884.)

Legislative history of Law 10-159. — Law 10-159, the “Police Truancy Enforcement Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-248, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second read-

ings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-275 and transmitted to both Houses of Congress for its review. D.C. Law 10-159 became effective on August 25, 1994.

§ 31-403. Enforcement; penalties.

(a) An accurate daily record of the attendance of all minors covered by § 31-402 and this section shall be kept by the teachers of each public, independent, private, or parochial school and by every teacher who gives instruction privately. These records shall be open for inspection at all times by the Board, the Superintendent of Schools, school attendance officers, or other persons authorized to enforce this subchapter.

(b) It shall be the duty of each principal, head teacher, or school administrative officer as designated in each public, independent, private, or parochial school, and of each teacher who gives private instruction to report to the Board the school attendance of any minor covered by § 31-402(a) who is enrolled in a school or who is enrolled for private instruction and who is absent from school or instruction for more than 2 full-day sessions or 4 half-day sessions in any school month, along with a statement of the reasons for the absences.

(c) The absence of a minor covered by § 31-402(a) without valid excuse shall be unlawful.

(d) The parent, guardian, or other person who has custody or control of a minor covered by § 31-402(a) who is absent from school without a valid excuse shall be guilty of a misdemeanor.

(e) Any person convicted of failure to keep a minor in regular attendance in a public, independent, private, or parochial school, or failure to provide regular private instruction acceptable to the Board may be fined not less than \$100 or imprisoned for not more than 5 days, or both for each offense.

(f) Each unlawful absence of a minor for 2 full-day sessions or for 4 half-day sessions during a school month shall constitute a separate offense.

(g) For the 1st offense, upon payment of costs, the sentence may be suspended and the defendant may be placed on probation.

(h) For any person convicted under this section, the courts shall consider requiring the offender to perform community service as an alternative to fine

or imprisonment or both. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, §§ 5-7; 1973 Ed., §§ 31-205 — 31-207; renumbered as Art. II, § 2 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Section references. — This section is referred to in §§ 31-406 and 31-413.

Legislative history of Law 8-247. — See note to § 31-401.

Presumption. — Subsection (d) of this section allows for a permissive inference or presumption whereby the court may find that the defendant is guilty if the government proves beyond a reasonable doubt that the defendant had control or custody of her child and that the child was absent from school; this presumption is valid because the court could rationally infer that a child's school absences arose out of the parent's control or custody of her. *District of Columbia v. Brown*, 124 WLR 1965 (Super. Ct. 1996).

Parent's failure to ensure school attendance deemed neglect. — A child is neglected within the meaning of § 16-2301(9)(B) where he had attended less than 30 days of school

between ages 8 and 14, as the failure of the custodial parent to ensure regular school attendance amounted to a lack of proper parental care. In *re LeShawn R.*, 114 WLR 1109 (Super. Ct. 1986).

Truancy not an offense. — Because there is no truancy offense in the D.C. Code, the police cannot lawfully detain juveniles to determine if they are engaging in a "delinquent act" by being out of school. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Where police made a Terry stop based solely on "suspected truancy", they lacked a basis to reasonably suspect that the defendant was engaged in wrongdoing since an act of "truancy" by a juvenile is not unlawful in the District of Columbia. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Former § 31-405 cited in *In re D.M.C.*, App. D.C., 503 A.2d 1280 (1986).

§ 31-404. Census of minors.

The Board, or its designee, shall conduct annually, or as frequently as may be found necessary or desirable, a complete census of all minors 3 years of age or more who permanently or temporarily reside in the District. The census record shall be amended from day to day as changes of residence occur among minors within the age group, as other persons come within or leave the age group, and as other persons within the age group become residents of or leave the District. The census record of minors shall give the full name, address, sex, and date of birth of each minor, the school attended by him or her and, if the minor is not at school, the name and address of his or her employer, if any, and the name, address, telephone numbers, if any, and occupation of each parent or guardian. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 1; 1973 Ed., § 31-208; renumbered as Art. II, § 3 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Section references. — This section is referred to in §§ 31-406, 31-413, 31-2815, and 31-2853.14.

Legislative history of Law 8-247. — See note to § 31-401.

§ 31-405. Report of enrollments and withdrawals.

The principal or head teacher of each public, independent, private, or parochial school, and each teacher who gives private instruction, shall, in accordance with the rules adopted by the Board pursuant to subchapter I of Chapter 15 of Title 1, report to the Board the name, address, sex, and date of birth of each minor who resides permanently or temporarily in the District who transfers between schools or who enrolls in or withdraws from his or her school. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 2; 1973 Ed., § 31-209;

renumbered as Art. II, § 4 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Section references. — This section is referred to in §§ 31-406 and 31-413.

Legislative history of Law 8-247. — See note to § 31-401.

§ 31-406. Penalty for failure to provide correct information.

Any parent, guardian, custodian, principal, or teacher of a minor who has reached the age of 3 years who willfully neglects or refuses to provide the information required by §§ 31-402 through 31-406, or who knowingly makes any false statement, shall be guilty of a misdemeanor. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 3; 1973 Ed., § 31-210; renumbered as Art. II, § 5 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Section references. — This section is referred to in § 31-413.

Legislative history of Law 8-247. — See note to § 31-401.

§§ 31-407 to 31-410. [Transferred].

Editor's notes. — D.C. Law 8-247 rewrote and redesignated former §§ 31-401 to 31-410 as present §§ 31-401 to 31-406. As amended by

D.C. Law 8-247, present §§ 31-403 to 31-406 are derived from former §§ 31-407 to 31-410.

§§ 31-411, 31-412. Department of School Attendance and Work Permits — Creation; Director; appointments.

Repealed. Mar. 8, 1991, D.C. Law 8-247, § 2(b), 38 DCR 376.

Legislative history of Law 8-247. — See note to § 31-401.

§ 31-413. Court jurisdiction.

The Family Division of the Superior Court is hereby given jurisdiction in all cases arising under §§ 31-401 to 31-413. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 3; May 29, 1928, 45 Stat. 1006, ch. 908, § 26; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(g); 1973 Ed., § 31-213.)

Subchapter II. Expulsion of Students Who Bring Weapons Into Public Schools.

§ 31-451. Expulsion of students.

Absent extenuating circumstances, as determined on a case-by-case basis by the Superintendent of Schools, and consistent with the Individuals With Disabilities Education Act, approved October 30, 1990 (104 Stat. 1141; 20 U.S.C. 1400 et seq.), any student who brings a weapon into a District of

Columbia Public School shall be expelled for not less than one year. (Apr. 9, 1997, D.C. Law 11-174, § 2(a), 43 DCR 4500.)

Temporary addition of subchapter. — Section 2 of D.C. Law 11-173 enacted §§ 31-451 through 31-454, comprising subchapter II of Chapter 4 of Title 31.

Section 4(b) of D.C. Law 11-173 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of subchapter, see § 2(a)-(d) of the Expulsion of Students Who Bring Weapons into Public Schools Emergency Act of 1996 (D.C. Act 11-289, July 1, 1996, 43 DCR 3711), § 2(a)-(d) of the Expulsion of Students Who Bring Weapons into Public Schools Congressional Review Emergency Act of 1996 (D.C. Act 11-398, October 9, 1996, 43 DCR 5692), § 2(a)-(d) of the Expulsion of Student Who Bring Weapons Into Public Schools Second Congressional Review Emergency Act of 1996 (D.C. Act 11-467, December 30, 1996, 44 DCR 172), and § 2(a)-(d) of the Expulsion of Students Who Bring Weapons Into Public Schools Congressional Review Emergency Act of 1997 (D.C. Act 12-22, March 3, 1997, 44 DCR 1770).

Section 3 of D.C. Act 11-467 provides for the application of the act.

Section 4 of D.C. Act 12-22 provides for the application of the act.

Legislative history of Law 11-173. — Law 11-173, the “Expulsion of Students Who Bring Weapons Into Public Schools Temporary Act of 1996,” was introduced in Council and assigned Bill No. 11-539, which was retained by the Council. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-322 and transmitted to both Houses of Congress for its review. D.C. Law 11-173 became effective on April 9, 1997.

Legislative history of Law 11-174. — Law 11-174, the “Expulsion of Students Who Bring Weapons Into Public Schools Act of 1996,” was introduced in Council and assigned Bill No. 11-540, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-323 and transmitted to both Houses of Congress for its review. D.C. Law 11-174 became effective on April 9, 1997.

§ 31-452. Reference to criminal justice or juvenile delinquency system.

Pursuant to the Gun-Free Schools Act of 1994, approved October 20, 1994 (108 Stat. 3908; 20 U.S.C. 8921 *et seq.*) the Superintendent of Schools shall refer to the criminal justice or juvenile delinquency system, simultaneous with expulsion, any student who is expelled for bringing a weapon into a District of Columbia Public School. (Apr. 9, 1997, D.C. Law 11-174, § 2(b), 43 DCR 4500.)

Temporary addition of subchapter. — See note to § 31-451.

Emergency act amendments. — For temporary addition of subchapter, see note to § 31-451.

Legislative history of Law 11-173. — See note to § 31-451.

Legislative history of Law 11-174. — See note to § 31-451.

§ 31-453. Alternative educational programs.

The Board of Education shall provide to any student who is expelled from school in accordance with this act an alternative educational program at the D.C. Street Academy, at another existing alternative educational program, or at any alternative educational program that may be established in the future. Not later than 90 days after the effective date of this subchapter:

(1) The Mayor and the Board of Education shall submit a report to the Council delineating a comprehensive plan for providing alternative educational services to a student who has been expelled from a District of Columbia Public School setting.

(2) The comprehensive plan shall include a description of the alternative education services to be provided to an expelled student, each location where the alternative education services shall be provided, and the estimated annual cost of providing the alternative education services. (Apr. 9, 1997, D.C. Law 11-174, § 2(c), 43 DCR 4500.)

Temporary addition of subchapter. — See note to § 31-451.

Emergency act amendments. — For temporary addition of subchapter, see note to § 31-451.

Legislative history of Law 11-173. — See note to § 31-451.

Legislative history of Law 11-174. — See note to § 31-451.

§ 31-454. Definitions.

(a) For the purposes of this subchapter, the term “weapon” means a firearm and includes:

(1) Any weapon, including a starter gun, which will or is desinged to or may be readily converted to expel a projectile by the action of an explosive:

(2) The frame or receiver of any weapon described in this subsection;

(3) Any firearm muffler or firearm silencer; or

(4) Any destructive device; the term “destructive device” means:

(A) Any explosive, incendiary, or poison gas;

(B) Bomb;

(C) Grenade;

(D) Rocket having a propellant charge or more than 4 ounces;

(E) Missile having an explosive or incendiary charge of more than a ¼ ounce;

(F) Mine; or

(G) Any similar device.

(5) Any type of weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than ½ an inch in diameter; and

(6) Any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraphs (e) and (f) of this paragraph and from which a destructive device may be readily assembled.

(b) The term “weapon” shall not include:

(1) An antique firearm;

(2) Any device which is neither designed nor redesigned for use as a weapon; or

(3) Any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device. (Apr. 9, 1997, D.C. Law 11-174, § 2(d), 43 DCR 4500.)

Temporary addition of subchapter. — See note to § 31-451.

Emergency act amendments. — For temporary addition of subchapter, see note to § 31-451.

Legislative history of Law 11-173. — See note to § 31-451.

Legislative history of Law 11-174. — See note to § 31-451.

CHAPTER 5. IMMUNIZATION OF SCHOOL STUDENTS.

Sec.

31-501. Definitions.

31-502. Certification of immunization required.

31-503. Immunization standards; list of immunizations.

31-504. Notification of immunization information by school.

Sec.

31-505. Attendance without certification.

31-506. Exemption from certification.

31-507. Immunization plan; suspension of chapter.

31-508. Severability.

§ 31-501. Definitions.

For the purpose of this chapter:

(1) The term “admit” or the term “admission” means the official enrollment at any level by a school of a student that entitles the student to attend the school regularly, whether full-time or part-time, and to participate fully in all the activities established for a student of his or her age, educational level, or other appropriate classification.

(2) The term “certification of immunization” means written certification by a private physician, his or her representative, or the public health authorities that the student is immunized.

(3) The term “student” means any person who seeks admission to school, or for whom admission to school is sought by a parent or guardian, and who will not have attained the age of 26 years by the start of the school term for which admission is sought.

(4) The term “immunized” or the term “immunization” means initial immunization and any boosters or reimmunization required to maintain immunization against diphtheria, poliomyelitis, tetanus, rubella, measles, and mumps in accordance with the immunization standards issued by the public health authorities pursuant to this chapter.

(5) The term “Mayor” means the Mayor of the District of Columbia.

(6) The term “public health authorities” means the official or officials of the executive branch of the government of the District of Columbia designated by the Mayor pursuant to this chapter.

(7) The term “responsible person” means, in the case of a student under 18 years of age, a parent or guardian of the student, but in the case of a student 18 years of age or older, the student himself or herself.

(8) The term “school” means:

(A) Any public school through the 12th grade operated under the authority of the Board of Education of the District of Columbia;

(B) Any private or parochial school that offers instruction at any level or grade from kindergarten through 12th;

(C) Any private or parochial nursery school or preschool, or any private or parochial day-care facility required to be licensed by the District of Columbia; and

(D) Any college or university created or incorporated by special act of Congress or the Council of the District of Columbia or required to be licensed by the District of Columbia. (1973 Ed., § 31-2201; Sept. 28, 1979, D.C. Law 3-20, § 2, 26 DCR 380.)

Legislative history of Law 3-20. — Law 3-20 was introduced in Council and assigned Bill No. 3-66, which was referred to the Committee on Human Resources. The Bill was adopted on first, amended first, and second

readings on May 22, 1979, June 5, 1979, and June 19, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-64 and transmitted to both Houses of Congress for its review.

§ 31-502. Certification of immunization required.

No student shall be admitted by a school unless the school has certification of immunization for that student, or unless the student is exempted pursuant to § 31-506. (1973 Ed., § 31-2202; Sept. 28, 1979, D.C. Law 3-20, § 3, 26 DCR 380.)

Legislative history of Law 3-20. — See note to § 31-501.

§ 31-503. Immunization standards; list of immunizations.

The Mayor shall, by regulations, specify the immunization standards to be used for compliance with this chapter, and may also, by regulation, revise the list of requested immunizations. (1973 Ed., § 31-2203; Sept. 28, 1979, D.C. Law 3-20, § 4, 26 DCR 380.)

Legislative history of Law 3-20. — See note to § 31-501.

§ 31-504. Notification of immunization information by school.

(a) With respect to any student for whom a school does not have certification of immunization, the school shall notify a responsible person:

- (1) That it has no certification of immunization for the student;
- (2) That it may not admit the student without certification (unless the student is exempted on medical or religious grounds pursuant to § 31-506);
- (3) That the student may be immunized and receive certification by a private physician or the public health authorities; and
- (4) How to contact the public health authorities to learn where and when they perform these services.

(b) Neither the District of Columbia nor any school or school official shall be liable in damages to any person for failure to comply with this section. (1973 Ed., § 31-2204; Sept. 28, 1979, D.C. Law 3-20, § 5, 26 DCR 380.)

Legislative history of Law 3-20. — See note to § 31-501.

§ 31-505. Attendance without certification.

A school shall permit a student to attend for not more than 10 days while the school does not have certification of immunization for that student. If immunization requires a series of treatments that cannot be completed within the 10 days, the student shall be permitted to attend school while the treatments are continuing if, within the 10 days, the school receives written notification from

whomever is administering it that the immunization is in progress. (1973 Ed., § 31-2205; Sept. 28, 1979, D.C. Law 3-20, § 6, 26 DCR 380.)

Legislative history of Law 3-20. — See note to § 31-501.

§ 31-506. Exemption from certification.

No certification of immunization shall be required for the admission to a school of a student:

(1) For whom the responsible person objects in good faith and in writing, to the chief official of the school, that immunization would violate his or her religious beliefs; or

(2) For whom the school has written certification by a private physician, his or her representative, or the public health authorities that immunization is medically inadvisable. (1973 Ed., § 31-2206; Sept. 28, 1979, D.C. Law 3-20, § 7, 26 DCR 380.)

Section references. — This section is referred to in §§ 31-502 and 31-504.

Legislative history of Law 3-20. — See note to § 31-501.

§ 31-507. Immunization plan; suspension of chapter.

In order to implement the requirements of this chapter efficiently, the public health authorities may develop a plan under which immunization may be made available to students according to groups defined alphabetically, geographically, or by age or grade or otherwise, and upon application of the public health authorities or the Superintendent of Schools, the Mayor may suspend for no longer than one year the application of this chapter to those groups of students to whom immunization under such a plan will not be made available soon enough to avoid barring them from admission to school. (1973 Ed., § 31-2207; Sept. 28, 1979, D.C. Law 3-20, § 8, 26 DCR 380.)

Legislative history of Law 3-20. — See note to § 31-501.

§ 31-508. Severability.

If any provision of this chapter or its application to any person or circumstance is held to be invalid, the remaining provisions and other applications shall not be affected. (1973 Ed., § 31-2208; Sept. 28, 1979, D.C. Law 3-20, § 10, 26 DCR 380.)

Legislative history of Law 3-20. — See note to § 31-501.

CHAPTER 6. TUITION OF NONRESIDENTS.

Sec.

31-601. Attendance at Teachers College by foreign students.

31-602. Tuition required of nonresidents; deposit of payments.

31-603. Regulations determining tuition requirement; penalties; prosecutions.

Sec.

31-604. Definitions.

31-605. Authority not affected by Reorganization Plan; delegation of functions; § 31-601 to remain in full force and effect.

31-606. Teachers College tuition.

§ 31-601. Attendance at Teachers College by foreign students.

Notwithstanding any other provision of law, not to exceed 25 foreign students who are in the United States on valid unexpired student visas may be permitted to attend the District of Columbia Teachers College each year on the same basis, so far as payment of tuition and fees are concerned, as a resident of the District of Columbia. Admission to and attendance at such college by such students shall be subject to rules and regulations prescribed by the Board of Education of the District of Columbia. (Apr. 23, 1958, 72 Stat. 98, Pub. L. 85-384, § 1; 1973 Ed., § 31-301a.)

Section references. — This section is referred to in § 31-605.

References in text. — The District of Columbia Teachers College, referred to in this

section, has been absorbed into the University of the District of Columbia pursuant to Chapter 15 of this title.

§ 31-602. Tuition required of nonresidents; deposit of payments.

(a) In the case of: (1) each adult who attends a public school of the District of Columbia and does not reside in the District of Columbia; and (2) each child who attends such a public school and does not have a parent or guardian who resides in the District of Columbia, or is not an orphan; there shall be paid to the Board of Education the amount fixed by the Board of Education pursuant to subsection (b) of this section.

(b) The amount which shall be paid with respect to each person subject to subsection (a) of this section shall be fixed by the Board of Education as the amount necessary to cover the expense of tuition and cost of textbooks and school supplies used by such person; provided, that such amounts and changes in the amounts fixed by this subsection are set by the Board in accordance with the provisions of § 1-1506(a). Following the final adoption of such amounts, the Board shall transmit a copy to the Mayor and a copy to the Council of the District of Columbia.

(c) All amounts received by the Board of Education under this section shall be paid to the D.C. Treasurer under regulations established by the Mayor and accounted for in the General Fund as a separate revenue source allocable to provide authority for such school purposes as the Board of Education may approve. Any unexpended balance at the end of fiscal year 1981 or each succeeding year thereafter shall be reserved as a restricted fund balance and

used to provide authority to expend for subsequent years subject to the direction of the Board; provided, that the base of the budget of the Board of Education shall be reduced by an amount equal to the estimated revenue from nonresident tuition for fiscal year 1981.

(d) Notwithstanding the provisions of subsection (a) of this section, upon the submission of evidence satisfactory to the Board of Education that care, custody, and substantial support are supplied by the person or persons with whom a child is residing in the District of Columbia, and that the parent or guardian of such child is unable to supply such care, custody, and support, or that such child is self-supporting, such child shall be considered a resident of the District of Columbia for the purpose of school attendance and exempt from the requirement to pay tuition. (Sept. 8, 1960, 74 Stat. 853, Pub. L. 86-725, § 2; 1973 Ed., § 31-307; Aug. 22, 1980, D.C. Law 3-82, § 2(a), (b), 27 DCR 2647.)

Emergency act amendments. — For temporary amendment of section, see § 2 of the Waiver of Tuition for Non-Resident Minor Children of Deceased or Incapacitated Parents Emergency Amendment Act of 1994 (D.C. Act 10-237, April 28, 1994, 41 DCR 2606).

Section references. — This section is referred to in §§ 31-603, 31-604, 31-605, and 31-606.

Legislative history of Law 3-82. — Law 3-82 was introduced in Council and assigned Bill No. 3-3, which was referred to the Committee of the Whole. The Bill was adopted on first, amended first and second readings on April 22, 1980, May 6, 1980, and May 20, 1980, respectively. Signed by the Mayor on June 12, 1980, it

was assigned Act No. 3-196 and transmitted to both Houses of Congress for its review.

Determination of residency. — District of Columbia Public School's consideration of evidence of petitioner's residency, including his Maryland car registration tags, ownership of a Maryland home, receipt of mail at that address, his employer's personnel files, and his neighbors' belief that he lived at the Maryland address, did not reflect an unreasonable interpretation of the statutory or regulatory meaning of residency, or contravene this section in any way. *Robinson v. Smith*, App. D.C., 683 A.2d 481 (1996).

Cited in *Truesdale v. District of Columbia*, 436 F.2d 288 (D.C. Cir. 1970).

§ 31-603. Regulations determining tuition requirement; penalties; prosecutions.

(a) The Board of Education shall take such action as may be necessary to determine which of the persons, attending or desiring to attend the public schools of the District of Columbia, for whom tuition shall be paid as required by § 31-602, and said Board is authorized to make regulations to carry out the intent and purposes of §§ 31-602 to 31-606; provided, that such rules and all changes proposed to such rules are issued by the Board in accordance with the provisions of § 1-1506(a). Following the final adoption of such rules, the Board shall transmit a copy to the Mayor and a copy to the Council of the District of Columbia.

(b) Any person who makes a statement required or authorized by §§ 31-602 to 31-606 to be filed with the Board of Education knowing that the information set forth in such statement is false shall be fined not more than \$300 or imprisoned for not more than 90 days, or both. Any person violating any regulation made pursuant to the authority in §§ 31-602 to 31-606 shall be fined not more than \$100 or imprisoned for not more than 30 days.

(c) All prosecutions for violations of §§ 31-602 to 31-606, or regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. As used in

§§ 31-602 to 31-606 the term "Corporation Counsel" means the attorney for the District of Columbia, by whatever title such attorney may be known, designated by the Mayor of the District of Columbia to perform the functions prescribed for the Corporation Counsel in §§ 31-602 to 31-606. (Sept. 8, 1960, 74 Stat. 853, Pub. L. 86-725, § 3; 1973 Ed., § 31-308; Aug. 22, 1980, D.C. Law 3-82, § 2(c), 27 DCR 2647.)

Section references. — This section is referred to in §§ 31-604, 31-605, and 31-606.

Legislative history of Law 3-82. — See note to § 31-602.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-604. Definitions.

As used in §§ 31-602 to 31-606:

- (1) The term "child" means a person who is less than 18 years of age.
- (2) The term "orphan" means a child who resides in the District of Columbia and who does not have a living parent or guardian.
- (3) The term "adult" means a person who is 18 years of age, or older.
- (4) The term "guardian" means a person:
 - (A) Appointed as a guardian for a child by a court of competent jurisdiction; and
 - (B) Who has control or custody of such child.
- (5) The term "parent" means a person:
 - (A) Who:
 - (i) Is a natural parent of a child;
 - (ii) Is a stepfather or stepmother of a child; or
 - (iii) Has adopted a child; and
 - (B) Who has custody or control of such child.
- (6) The term "Board of Education" means the Board of Education of the District of Columbia. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 4; 1973 Ed., § 31-309; July 22, 1976, D.C. Law 1-75, § 5(f), 23 DCR 1183.)

Section references. — This section is referred to in §§ 31-603, 31-605, and 31-606.

Legislative history of Law 1-75. — Law 1-75 was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and trans-

mitted to both Houses of Congress for its review.

This section provides the only definition of "parent." *Butler v. Metropolitan Life Ins. Co.*, 500 F. Supp. 661 (D.D.C. 1980), but see, *Mobley v. Metropolitan Life Ins. Co.*, 907 F. Supp. 495 (D.D.C. 1995).

Local law, taken as whole, determines whether individual is "parent" within the meaning of the Federal Employees Group Life

Insurance Act (FEGLIA), 5 U.S.C. § 8701 et seq., and this section is merely 1 provision scrutinized by the court. *Butler v. Metropolitan Life Ins. Co.*, 500 F. Supp. 661 (D.D.C. 1980), but see, *Mobley v. Metropolitan Life Ins. Co.*, 907 F. Supp. 495 (D.D.C. 1995).

§ 31-605. Authority not affected by Reorganization Plan; delegation of functions; § 31-601 to remain in full force and effect.

(a) Nothing in §§ 31-602 to 31-606 shall be construed so as to affect the authority vested in the Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952 (66 Stat. 824). The performance of any function vested by §§ 31-602 to 31-606 in the Commissioners of the District of Columbia or in any office or agency under the jurisdiction and control of said Commissioners may be delegated by said Commissioners in accordance with § 3 of such Plan.

(b) Sections 31-602 to 31-606 shall not be construed as superseding § 31-601, and such section shall continue in full force and effect. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 5; 1973 Ed., § 31-310.)

Section references. — This section is referred to in §§ 31-603, 31-604, and 31-606.

§ 31-606. Teachers College tuition.

Nothing contained in §§ 31-602 to 31-606 shall be construed as preventing the Board of Education from requiring students of the District of Columbia Teachers College to pay tuition, and the said Board is authorized, in its discretion, to require the payment of tuition by the students of such college, whether or not resident in the District of Columbia, with the exception of those students who are authorized to be excused from the payment of tuition by an act other than §§ 31-602 to 31-606. (Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 7; 1973 Ed., § 31-311.)

Section references. — This section is referred to in §§ 31-603, 31-604, and 31-605.

CHAPTER 7. FREE TEXTBOOKS.

Sec.

31-701. Textbooks and supplies furnished without charge.

31-702. Books remain District property.

31-703. Liability for damaged books.

Sec.

31-704. Limitation on purchases.

31-705. Sale or exchange authorized.

31-706. Expense of textbooks and supplies.

§ 31-701. Textbooks and supplies furnished without charge.

The Board of Education of the District of Columbia shall provide pupils of the public elementary schools, public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 1; 1973 Ed., § 31-401.)

Cross references. — As to provision that school officials are not to profit from purchase of school supplies, see § 31-2202.

§ 31-702. Books remain District property.

All books purchased by the Board of Education shall be held as property of the District of Columbia and shall be loaned to pupils under such conditions as the Board of Education may prescribe. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 2; 1973 Ed., § 31-402.)

§ 31-703. Liability for damaged books.

Parents and guardians of pupils shall be responsible for all books loaned to the children in their charge and shall be held liable for the full price of every such book destroyed, lost, or so damaged as to be made unfit for use by other pupils. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 3; 1973 Ed., § 31-403.)

§ 31-704. Limitation on purchases.

The Board of Education shall, through the Office of Contracting and Procurement, purchase for use in the public schools only such books and supplies as shall have been duly recommended by the Superintendent of Schools and formally approved by the Board of Education. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 4; 1973 Ed., § 31-404; Apr. 12, 1997, D.C. Law 11-259, § 312, 44 DCR 1423.)

Cross references. — As to other powers and duties of Superintendent, see § 31-107.

Effect of amendments. — D.C. Law 11-259 inserted "through the Office of Contracting and Procurement."

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to

the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

§ 31-705. Sale or exchange authorized.

The Board of Education, in its discretion, is authorized to make exchange or to sell books or other educational supplies which are no longer desired for school use. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 5; 1973 Ed., § 31-405.)

§ 31-706. Expense of textbooks and supplies.

The Board of Education is authorized to provide for the necessary expenses of purchase, distribution, care, and preservation of said textbooks and educational supplies out of money appropriated under authority of this chapter. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 6; 1973 Ed., § 31-406.)

CHAPTER 8. PUBLIC SCHOOL FOOD SERVICES.

Sec.

31-801. Department of Food Services.

31-802. Powers of Board.

31-803. Service credit for retirement; deposits.

31-804. Deposit of revenues and receipts.

31-805. Equipment appropriations.

Sec.

31-806. National School Lunch Act.

31-807. Audits of accounts.

31-808. Distribution of commodities.

31-809. Appropriations for distribution of commodities.

§ 31-801. Department of Food Services.

There is hereby created in the public schools of the District of Columbia a Department of Food Services, which Department, under the direction and control of the Board of Education of the District of Columbia, hereinafter referred to as the "Board," is hereby authorized to conduct a centralized system of public school cafeterias, lunchrooms, and related services, hereinafter referred to as "food services." Contracting for services, supplies, or equipment shall be done through the Office of Contracting and Procurement. (Oct. 8, 1951, 65 Stat. 367, ch. 448, title I, § 1; 1973 Ed., § 31-1401; Apr. 12, 1997, D.C. Law 11-259, § 313, 44 DCR 1423.)

Cross references. — As to exemption in restaurant license law for school cafeterias and restaurants, see § 47-2827.

Section references. — This section is referred to in § 31-806.

Effect of amendments. — D.C. Law 11-259 added the last sentence.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

Contracting out of food services and

security services by Board of Education.

— Section 1203 of D.C. law 11-98 required the Board of Education to contract out, beginning in School Year 1995-96 and Fiscal Year 1996, all food services operations and security services for the D.C. Public Schools and to contract out, for no more than a 3-year period, beginning in School Year 1995-96 and Fiscal Year 1996, the development of new management and data systems, as well as training of currently employed personnel to use and manage these systems, in the area of budget, finance, personnel/human resources, management information services, procurement, and supply management.

Section 1401 of D.C. Law 11-98 provided that §§ 201, 301, 302, and 1203 of the act shall apply upon enactment by Congress of the District of Columbia Appropriations Act, 1996.

§ 31-802. Powers of Board.

For carrying out the purposes of this chapter, the Board is empowered:

(1) To establish in the Department of Food Services an Office of Central Management consisting of a Director and assistant directors of Food Services, whose compensation shall be fixed in accordance with the District of Columbia Teachers' Salary Act of 1955, as amended;

(2) To make and enforce such rules and regulations as it deems necessary for the government of the Department of Food Services and for the use and enjoyment of the facilities and services of such department;

(3) Upon the written recommendation of the Superintendent of Schools, to employ such personnel as may be required to manage cafeterias, lunchrooms, and related services and to conduct the Office of Central Management;

(4) Upon the written recommendation of the Superintendent of Schools, to employ on a full-time or part-time basis such personnel as may be required for the operation and maintenance of food services. The Mayor of the District of Columbia shall fix and adjust, from time to time, the rates of pay of such personnel in accordance with the rates of pay of personnel in positions of similar levels of duties, responsibilities, and qualification requirements, as determined by the Mayor, and with respect to part-time employees without regard to prohibitions or limitations relating to dual compensation as contained in any act of Congress. Persons employed under the provisions of this paragraph shall be entitled to compensation for all time when and as they perform service, and, in addition thereto, shall be entitled to compensation for such holidays as fall within a regular tour of duty of not less than 5 days in any established workweek. Persons employed under this paragraph shall not be entitled, by reason of such service, to vacation or annual leave with pay. Notwithstanding the provisions of any other law, such persons shall be entitled to sick leave with pay, to be cumulative at the rate of 1 day a month, September to June, inclusive, of each year, the total cumulation not to exceed 30 days, to be granted under such conditions as the Board may by regulation prescribe: Provided, that as to part-time employees such leave shall be prorated on an hourly basis. The days of sick leave with pay provided for in this section shall mean days on which employees would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board; and

(5) Upon the written recommendation of the Superintendent of Schools, to accept for the benefit of the program of food services gifts of money and of personal property. (Oct. 8, 1951, 65 Stat. 367, ch. 448, title I, § 2; Oct. 25, 1968, 82 Stat. 1363, Pub. L. 90-640, § 1; 1973 Ed., § 31-1402; Mar. 3, 1979, D.C. Law 2-139, § 3204(c), 25 DCR 5740; June 14, 1980, D.C. Law 3-70, § 7(k)(1), 27 DCR 1776.)

Section references. — This section is referred to in §§ 1-637.1 and 31-806.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-70. — Law 3-70 was introduced in Council and assigned Bill No. 3-197, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 18, 1980 and April 1, 1980, respectively. Signed by the Mayor on April 25, 1980, it was assigned Act No. 3-176 and transmitted to both Houses of Congress for its review.

References in text. — “The District of Columbia Teachers’ Salary Act of 1955 as amend-

ed,” referred to in paragraph (1) of this section, refers to the Act of August 5, 1955, 69 Stat. 521, ch. 569.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-803. Service credit for retirement; deposits.

Service rendered by any person for salary or wages as an employee of any cafeteria or lunchroom operated in the public school buildings of the District during any period prior to the date when such cafeteria or lunchroom is placed under the Office of Central Management shall, if and when such person becomes an employee of the Department of Food Services, be deemed to be service rendered for the government of the District of Columbia for purposes of subchapter III of Chapter 83 of Title 5, United States Code, to be computed in accordance with §§ 8332 and 8333 of Title 5, United States Code; provided, that such person shall make deposits covering such service as provided in § 8334 of Title 5, United States Code; and provided further, that any such person may elect to make such deposits in installments in accordance with the provisions of § 8334 of Title 5, United States Code. (Oct. 8, 1951, 65 Stat. 368, ch. 448, title I, § 3; Oct. 25, 1951, 65 Stat. 637, ch. 560, § 3; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 1; 1973 Ed., § 31-1403.)

Section references. — This section is referred to in § 31-806.

§ 31-804. Deposit of revenues and receipts.

All revenues and receipts of any nature whatever derived from the operation of food services, or as otherwise provided by this chapter shall, under regulations established by the Mayor, be paid to the D.C. Treasurer and deposited in the General Fund, and accounted for within the General Fund as a separate revenue source allocable to provide authorization for such school authority as the Board of Education may approve. Any unexpended balance at the end of the year shall be reserved as a restricted fund balance and used to provide authorization to expend for subsequent years subject to the direction of the Board of Education. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 5; Oct. 25, 1968, 82 Stat. 1363, Pub. L. 90-640, § 2; 1973 Ed., § 31-1404; June 14, 1980, D.C. Law 3-70, § 7(k)(2), 27 DCR 1776.)

Section references. — This section is referred to in § 31-806.

Legislative history of Law 3-70. — See note to § 31-802.

§ 31-805. Equipment appropriations.

Appropriations are authorized for the payment of compensation for all personal services necessary for the operation of the Department of Food Services and for the acquisition, maintenance, and replacement of equipment for use in that operation. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 6; Sept. 2, 1958, 72 Stat. 1735, Pub. L. 85-901, § 1; Oct. 25, 1968, 82 Stat. 1363, Pub. L. 90-640, § 3; 1973 Ed., § 31-1405.)

Section references. — This section is referred to in § 31-806.

§ 31-806. National School Lunch Act.

Insofar as the Board shall conduct a school lunch program under the authority of §§ 31-801 to 31-807, it shall be considered a “school” within the meaning of the National School Lunch Act (42 U.S.C. § 1751 et seq.), and all funds to which it may thus become entitled as a participating school under the National School Lunch Act shall be deposited in the General Fund as provided in § 31-804. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title I, § 8; 1973 Ed., § 31-1407; June 14, 1980, D.C. Law 3-70, § 7(k)(4), 27 DCR 1776.)

Legislative history of Law 3-70. — See note to § 31-802.

§ 31-807. Audits of accounts.

It shall be the duty of the Auditor of the District of Columbia to audit at least quarterly the accounts of the Department of Food Services and make reports thereof to the Mayor of the District of Columbia. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title I, § 9; 1973 Ed., § 31-1408.)

Section references. — This section is referred to in § 31-806.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Auditor abolished. — The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, and effective September 2, 1952, established, under the direction and control of the Board of Commissioners, a Department of General Adminis-

tration headed by a Director. The Order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 19 established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. The function of the quarterly audit and report to the Commissioner of the accounts of the Department of Food Services was transferred to the Internal Audit Office. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order Nos. 3 and 19 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Organization Order No. 3 established within the newly created Department of General Administration, an Internal Audit Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Part IVB of Organization Order No. 3 and that portion of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof. Organization Order No. 50, dated December 31, 1974, established the Office of Budget and Management Systems, and transferred

to that Office the functions of the Municipal Audit Office. The Office of Budget and Management Systems was replaced by Mayor's Order

79-5, dated January 2, 1979, which Order established the Office of Budget and Revenue Development.

§ 31-808. Distribution of commodities.

The Board of Education of the District of Columbia is authorized: (1) to enter into a contract or contracts from time to time with the United States Department of Agriculture for the distribution to schools and to public and charitable institutions of commodities made available by said Department; and (2) to carry out, under regulations of the said Board, a program or programs of furnishing milk to school children in the District, including the purchase and distribution of milk under agreement with the United States Department of Agriculture; provided, that all moneys collected under such program or programs shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia for deposit into the Treasury of the United States to the credit of the District. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title II, § 201; 1973 Ed., § 31-1409.)

Section references. — This section is referred to in § 31-809.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office consisting of the Office

of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 31-809. Appropriations for distribution of commodities.

Appropriations are hereby authorized to enable the Board of Education to carry out the contracts and programs authorized by § 31-808. (Oct. 8, 1951, 65 Stat. 370, ch. 448, title II, § 202; 1973 Ed., § 31-1410.)

CHAPTER 9. AVIATION EDUCATION IN HIGH SCHOOLS.

Sec.

31-901. Aeronautics courses authorized.

31-902. Teachers of aeronautics.

Sec.

31-903. Free textbooks, maps, and supplies.

31-904. Annual estimates of expenses.

§ 31-901. Aeronautics courses authorized.

The Board of Education is hereby authorized and directed to establish and to include in the curricula of the senior high schools of the District of Columbia, as an additional optional course, a course in aeronautics, which shall include instruction in aerodynamics, the theory of flight, the airplane and its engine, mechanics, engineering, meteorology, practical air navigation, map reading, and such other allied subjects as the Board in its discretion may deem it advisable to prescribe. Such course shall be 1st offered during the high-school term beginning in 1942. Thereafter such additional courses in aeronautics may be added as deemed desirable by the Board of Education. The same credit toward graduation may be given for said course as is given for other optional courses in said schools. (Dec. 16, 1941, 55 Stat. 806, ch. 585, § 1; 1973 Ed., § 31-1201.)

§ 31-902. Teachers of aeronautics.

The Board is further authorized to employ a sufficient number of teachers of aeronautics, not to exceed 6, adequately to instruct those pupils who elect to pursue the said course, at the salary rates authorized for teachers in the senior high schools. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 2; 1973 Ed., § 31-1202.)

§ 31-903. Free textbooks, maps, and supplies.

The Board shall provide the pupils of the senior high schools, free of charge, with the use of all aeronautical textbooks, maps, and other necessary educational supplies required for said course. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 3; 1973 Ed., § 31-1203.)

§ 31-904. Annual estimates of expenses.

The Board shall on and after December 16, 1941, include in its annual estimates of money required for the public schools of the District of Columbia for the ensuing year an amount sufficient to defray the expenses herein authorized. (Dec. 16, 1941, 55 Stat. 807, ch. 585, § 5; 1973 Ed., § 31-1204.)

CHAPTER 10. TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL.

Sec.	Sec.
31-1001. Sexual discrimination; salary deductions; employment as clerk or librarian.	31-1018. Teachers in the Americanization schools; custodial staff.
31-1002. [Repealed].	31-1019. Teaching vacancies.
31-1003. Installment payments to certain teachers.	31-1020. [Repealed].
31-1004. Vocational education.	31-1021, 31-1022. [Repealed].
31-1005. [Repealed].	31-1023 to 31-1025. [Repealed].
31-1006. Classification of research assistants.	31-1026. [Repealed].
31-1007. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker; salary deductions.	31-1027. [Repealed].
31-1008. [Repealed].	31-1028. Employment of substitutes — Authorized; compensation.
31-1009. [Repealed].	31-1029. Same — Retired teachers.
31-1010. [Repealed].	31-1030. [Repealed].
31-1011 to 31-1016. [Repealed].	31-1031, 31-1032. [Repealed].
31-1017. Heads of certain departments; compensation.	31-1033. Foreign exchange program — Authorized; eligibility.
	31-1034. Same — Payment of salary.
	31-1035. Same — Assignment of foreign teachers; loyalty oath.

§ 31-1001. Sexual discrimination; salary deductions; employment as clerk or librarian.

In assigning salaries to teachers, no discrimination shall be made between male and female teachers employed in the same grade of school and performing a like class of duties; nor shall it be lawful to pay, or authorize or require to be paid, from any of the salaries of such teachers any portion or percentage thereof for the purpose of adding to salaries of higher or lower grades; and no such teacher shall be employed as, or required to discharge the duties of, a clerk or librarian. (Sept. 1, 1916, 39 Stat. 695, ch. 433, § 1; 1973 Ed., § 31-608.)

§ 31-1002. Payment of salaries.

Repealed. May 10, 1989, D.C. Law 7-231, § 30, 36 DCR 492.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988

and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 31-1003. Installment payments to certain teachers.

On and after July 1, 1943, the Board of Education is authorized to designate the months in which the 10 salary payments shall be made to teachers assigned to instruction in elementary science and school gardening, and in health, physical education, and playground activities. (July 1, 1943, 57 Stat. 322, ch. 184, § 1; 1973 Ed., § 31-609a.)

§ 31-1004. Vocational education.

The Board of Education is authorized and empowered to establish occupational schools on the elementary school level for pupils not prepared to pursue vocational courses in the trade or vocational schools and also to carry on trade or vocational courses on the senior high school level or in senior high schools. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 4; 1973 Ed., § 31-614.)

§ 31-1005. Head of Department of Military Science and Tactics; salary.

Repealed. May 10, 1989, D.C. Law 7-231, § 31, 36 DCR 492.

Legislative history of Law 7-231. — See note to § 31-1002.

§ 31-1006. Classification of research assistants.

Research assistants shall be classified as teachers for payroll purposes and for retirement purposes. (Apr. 5, 1939, 53 Stat. 568, ch. 39, § 4; 1973 Ed., § 31-623.)

§ 31-1007. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker; salary deductions.

In the event of the absence of any engineer, assistant engineer, janitor, assistant janitor, laborer, fireman, or caretaker at any time during school sessions the Board of Education is hereby authorized to appoint a substitute, who shall be paid the salary of the position in which employed, and the amount paid to such substitute shall be deducted from the salary of the absent employee. (Mar. 4, 1913, 37 Stat. 956, ch. 150, § 1; 1973 Ed., § 31-625.)

§ 31-1008. Rules for division of time and computation of pay for services.

Repealed. May 10, 1989, D.C. Law 7-231, § 32, 36 DCR 492.

Legislative history of Law 7-231. — See note to § 31-1002.

§ 31-1009. Double salaries — School teachers and employees in District.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 15, 29 DCR 49.

Legislative history of Law 4-78. — Law 4-78 was introduced in Council and assigned Bill No. 4-326, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1981

and November 24, 1981, respectively. Signed by the Mayor on December 15, 1981, it was assigned Act No. 4-126 and transmitted to both Houses of Congress for its review.

§ 31-1010. Same — Custodial employees in District.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 16, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1009.

§§ 31-1011 to 31-1016. Leave with part pay authorized; limitations; report of person on leave; termination of leave; leave of absence for educational purposes — compensation of elementary and secondary school teachers; compensation of other employees; inclusion for promotion and retirement purposes; masculine pronoun construed to include female employees.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 17, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1009.

§ 31-1017. Heads of certain departments; compensation.

From and after 10 days following August 28, 1958, there shall be only one person in charge of the following departments in the public school system of the District of Columbia: art, business education, English, foreign languages, guidance and placement, history, home economics, industrial arts, mathematics, military science and tactics, music, science, trade and industrial education, and health, physical education, athletics, and safety; except that in the case of persons reassigned pursuant to this section, nothing contained herein shall be construed to decrease the rate of compensation that any such person is receiving on the effective date of this section. If such person is placed in a lower salary class and the present salary of the incumbent falls between 2 step rates for the newly assigned class, he shall receive the higher of such rates. Whenever a department is established hereafter in the public school system of the District of Columbia there shall be but 1 person in charge of such department. (Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 3; 1973 Ed., § 31-680.)

§ 31-1018. Teachers in the Americanization schools; custodial staff.

(a) Officers and teachers in the Americanization, evening, and summer schools may also be officers and teachers in the regular day schools.

(b) Members of the custodial staff in the evening, summer, and Americanization schools may also be members of the custodial staff in the day schools. (July 1, 1943, 57 Stat. 322, ch. 184, § 1; 1973 Ed., § 31-681.)

§ 31-1019. Teaching vacancies.

Teaching vacancies which occur during any school year may be filled by the assignment of teachers of special subjects and teachers not now assigned to classroom instruction, and such teachers are hereby made eligible for such assignment without further examination. (July 1, 1943, 57 Stat. 322, ch. 184, § 1; 1973 Ed., § 31-682.)

§ 31-1020. Sick and emergency leave.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 18, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1009.

§§ 31-1021, 31-1022. Credit for cumulative leave on transfer or promotion; reinstatement after leave without pay granted.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 21, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1009.

§§ 31-1023 to 31-1025. Additional leave credits for service prior to July 1, 1949; maternity leave; additional leaves in emergencies.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 18, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1009.

§ 31-1026. Days of leave with pay defined.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 19, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1009.

§ 31-1027. Refund required for unearned advanced leave; exceptions.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 18, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1009.

§ 31-1028. Employment of substitutes — Authorized; compensation.

The Board of Education is hereby authorized to employ substitute teachers and attendance officers for service during the absence of any teacher or attendance officer on leave with pay or on leave without pay and to fix the rate of compensation to be paid such substitutes. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 6; Aug. 5, 1953, 67 Stat. 362, ch. 319, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 22; Oct. 2, 1972, 86 Stat. 760, Pub. L. 92-454, § 3; 1973 Ed., § 31-696.)

Cross references. — As to coverage under teachers' retirement system, see §§ 31-1230 and 31-1235.

Section references. — This section is referred to in § 31-1403.

§ 31-1029. Same — Retired teachers.

Persons who have retired as teachers under the provisions of subchapter I of Chapter 12 of this title; or subchapter II of Chapter 12 of this title; or subchapter III of Chapter 83 of Title 5, United States Code; may be employed as substitute teachers in the public schools of the District of Columbia when it is not practicable otherwise to secure qualified and competent persons. Any such persons granted temporary employment under authority of this section shall continue to receive their annuities during such employment and no deduction shall be made from the compensation of such persons for retirement benefits. The service rendered by such retired teachers employed as substitute teachers shall not be used to recompute their annuities. (Apr. 24, 1958, 72 Stat. 98, Pub. L. 85-385, § 1; 1973 Ed., § 31-696a.)

§ 31-1030. Rules and regulations; definitions.

Repealed. May 10, 1989, D.C. Law 7-231, § 33, 36 DCR 492.

Legislative history of Law 7-231. — See note to § 31-1002.

§§ 31-1031, 31-1032. Regulation of vacation periods and annual leave; prior leave; promulgation of rules.

Repealed. Mar. 16, 1981, D.C. Law 4-78, § 20, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1009.

§ 31-1033. Foreign exchange program — Authorized; eligibility.

(a) The Board of Education of the District of Columbia is authorized to participate in the teacher foreign exchange program in cooperation with the United States Office of Education.

(b) Any employee of the Board of Education of the District of Columbia who is subject to the provisions of the District of Columbia Teachers' Salary Act of 1955 shall, with the approval of the Board of Education, be eligible to participate in such program, and shall, if accepted for such foreign assignment, serve for a period not to exceed one calendar year, and shall, at the conclusion of such service, be returned to the position which he held before the exchange was effected; provided, that in any one calendar year not more than 10 such employees shall participate in such program. (Sept. 28, 1950, 64 Stat. 1076, ch. 1091, § 1; 1973 Ed., § 31-699.)

Section references. — This section is referred to in § 31-1035.

References in text. — "The District of Co-

lumbia Teachers' Salary Act of 1955," referred to in subsection (b) of this section, refers to the Act of August 5, 1955, 69 Stat. 521, ch. 569.

§ 31-1034. Same — Payment of salary.

The Board of Education of the District of Columbia is authorized to pay the full salary of the educational employee of said Board during the time such employee is performing teaching duties in a foreign country under such exchange program, in the same manner and to the same extent as if such educational employee were actually performing his teaching duties in his regularly assigned position in the public schools of the District of Columbia, and any such educational employee participating in such program shall, for purposes of promotion, computation of annual increment, computation of service for pension credit, including salary contributions to the pension fund, and leave of absence credits, be considered as performing teaching duties in the schools of the District of Columbia. (Sept. 28, 1950, 64 Stat. 1077, ch. 1091, § 2; 1973 Ed., § 31-699a.)

Section references. — This section is referred to in § 31-1035.

§ 31-1035. Same — Assignment of foreign teachers; loyalty oath.

(a) Each professionally qualified person from a foreign country exchanged under the provisions of §§ 31-1033 to 31-1035 with an educational employee of the Board of Education of the District of Columbia shall during the period of such exchange serve as a substitute for the exchanged teacher and shall be assigned in the public schools of the District of Columbia as the Board of Education shall determine. Such exchange teacher shall serve without compensation for such service from the District of Columbia or any agency thereof;

provided further, that the term of such assignment or exchange shall not exceed one calendar year.

(b) Notwithstanding any other provision of law, any foreign teacher, instructor, or professor assigned to duties in the public schools of the District of Columbia under the provisions of §§ 31-1033 to 31-1035 shall not be required to take an oath of office or any oath of allegiance or loyalty to the United States, but shall satisfy the Board of Education of the District of Columbia as to his personal, moral, and professional fitness to teach in the public schools of Washington, District of Columbia. (Sept. 28, 1950, 64 Stat. 1077, ch. 1091, § 3; 1973 Ed., § 31-699b.)

CHAPTER 11. SALARIES OF TEACHERS, SCHOOL OFFICERS AND OTHER EMPLOYEES.

Subchapter I. Salary Schedule.

Sec.

31-1101. [Repealed].

Subchapter II. Classification and Assignment of Employees.

31-1111 to 31-1113. [Repealed].

Subchapter III. Method of Assignment of Employees to Salary Schedules.

31-1121, 31-1122. [Repealed].

Subchapter IV. Method of Advancement and Promotion of Employees.

Sec.

31-1131 to 31-1136. [Repealed].

Subchapter V. Accompanying Legislation.

31-1141 to 31-1148. [Repealed].

Subchapter I. Salary Schedule.

§ 31-1101. **Salary schedule.**

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.

Legislative history of Law 4-78. — Law 4-78 was introduced in Council and assigned Bill No. 4-326, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1981

and November 24, 1981, respectively. Signed by the Mayor on December 15, 1981, it was assigned Act No. 4-126 and transmitted to both Houses of Congress for its review.

Subchapter II. Classification and Assignment of Employees.

§§ 31-1111, 31-1112. **Eligibility requirements for appointment and promotion; definitions; probationary period.**

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1101.

§ 31-1113. **Teaching certificates; renewals; rules and regulations.**

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 12, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1101.

Subchapter III. Method of Assignment of Employees to Salary Schedules.

§§ 31-1121, 31-1122. **Assignment of certain employees to salary classes; application of chapter; teacher-**

aide positions; initial assignment of school principals and periodic evaluation.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1101.

Subchapter IV. Method of Advancement and Promotion of Employees.

§§ 31-1131 to 31-1136. Assignment to service steps — method; promotions; new employees; adjustment of existing employees; military service; transfer from Board of Higher Education; probationary employees; salary increases; termination; temporary employees; promotions — groups A-1, B, C, and D; administrative errors; higher-paid salary classes.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1101.

Subchapter V. Accompanying Legislation.

§ 31-1141. Evening, summer, and Americanization schools; salaries.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1101.

§ 31-1142. Appropriation for summer school salaries.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 13, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1101.

§§ 31-1143 to 31-1148. Method of salary payment; regulation of vacation and leave periods of certain employees; sick and emergency leave provisions applicable to certain employees; sabbatical leave provisions applicable to certain employees; foreign teacher exchange program

applicable to certain employees; teacher retirement provisions applicable to certain employees.

Repealed. Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.

Legislative history of Law 4-78. — See note to § 31-1101.

CHAPTER 12. RETIREMENT OF PUBLIC SCHOOL TEACHERS.

Subchapter I. Retirement Before June 30, 1946.

Sec.

- 31-1201. Annuity — Salary deductions.
- 31-1202. Same — Deposit in United States Treasury.
- 31-1203. Retirement age; continuous employment requirements.
- 31-1204. Disability retirement; requirements.
- 31-1205. Annuity allowance.
- 31-1206. Minimum-service credit in cases of disability retirement.
- 31-1207. Appropriations for annuity; reserves; interest.
- 31-1208. Credit for service outside District.
- 31-1209. Refund on leaving service; reinstatement.
- 31-1210. Death of teacher — Designation of beneficiary.
- 31-1211. Same — Precedence of payments.
- 31-1212. Consent to deductions.
- 31-1213. Discharge of teachers.
- 31-1214. Definitions.
- 31-1215. Records to be kept by Mayor.
- 31-1216. Rules and regulations.
- 31-1217. Funds not subject to assignment, execution or levy.
- 31-1218. Application of subchapter — Annuities from other governments.
- 31-1219. Same — Annuities under prior act.

Subchapter II. Retirement After June 30, 1946.

- 31-1221. Salary deductions; deposit; purchase of annuity.
- 31-1222. Retirement credit for leave without pay.
- 31-1223. Retirement and Annuity Fund; income from investments; separate accounts.
- 31-1224. Voluntary and involuntary retirement.
- 31-1225. Disability retirement.

Sec.

- 31-1226. Computation of annuity; options.
- 31-1227. Recomputation of benefits.
- 31-1228. Annuity increase.
- 31-1229. Annuity of teachers retired for disability.
- 31-1230. Basis for determining annuity amount.
- 31-1231. Deferred annuity; annuity to survivors.
- 31-1232. Payment of beneficiaries.
- 31-1233. Consent to deductions.
- 31-1234. Discharge of teacher.
- 31-1235. Definitions.
- 31-1236. Records and accounts; report to Congress.
- 31-1237. Rules and regulations.
- 31-1238. Funds not assignable or subject to execution.
- 31-1239. Applicability.
- 31-1240. Recomputation of annuities.
- 31-1241. Adjustment of annuities on basis of price index; computation; definitions.
- 31-1242. Increased annuities for certain surviving spouses.
- 31-1243. Application of amendment to § 31-1241.
- 31-1244. Computation of interest.
- 31-1245. Employment of retired teachers.
- 31-1246. Waiver of annuity; revocation.
- 31-1247. Annuity increase.
- 31-1248. Annuity for unremarried widow or widower.
- 31-1249. Effective dates of annuities provided by §§ 31-1247 and 31-1248; computation.
- 31-1250. Payment of annuity increase.
- 31-1251. Retirement credit for leave without pay.
- 31-1252. Tax-sheltered annuity program.

Subchapter III. Retirement Incentive Program.

- 31-1271. Retirement Incentive Program.

*Subchapter I. Retirement Before June 30, 1946.***§ 31-1201. Annuity — Salary deductions.**

(a) There shall be deducted and withheld from the annual salary of every teacher in the public schools of the District of Columbia an amount computed to the nearest tenth of a dollar that will be sufficient, with interest thereon at 4 per centum per annum, compounded annually, to purchase, under the provisions of this subchapter, an annuity equal to 1% of his average annual salary received during the 10 years immediately preceding retirement, for each year of his whole term of service rendered after June 30, 1926, payable

monthly throughout life, for every such teacher who shall be retired, as herein provided.

(b) The deductions herein provided for shall be based on such annuity table or tables as the Council of the District of Columbia shall direct; provided, however, that said deductions shall in no case exceed 8% of his annual salary; and provided further, that when the annual salary exceeds \$2,000 the deductions and benefits shall be made as on an annual salary of \$2,000.

(c) The Council of the District of Columbia shall cause to be filed with the Board of Education on September 10th of each year a certificate showing the amount of deduction to be made from the salary of each teacher during the year, said deduction to be made in equal amounts, one to be deducted for each school month. A similar certificate shall be filed not later than the 15th day of each calendar month to cover cases of new entrants. No deduction shall be made from less than an entire month's salary. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 1; June 11, 1926, 44 Stat. 727, ch. 556, § 1; 1973 Ed., § 31-701.)

Section references. — This section is referred to in §§ 1-622.3 and 1-623.4.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(237) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1202. Same — Deposit in United States Treasury.

The amount so deducted and withheld from the annual salary of every teacher shall be deposited in the Treasury of the United States and shall be credited, together with interest at 4% per annum, compounded annually, to an individual account of the teacher from whose salary the deduction is made, which account shall be kept by the Auditor of the District of Columbia. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 2; June 11, 1926, 44 Stat. 727, ch. 556, § 1; 1973 Ed., § 31-702.)

Office of Auditor abolished. — The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, and effective September 2, 1952, established, under the direction and control of the Board of Commissioners, a Department of General Adminis-

tration headed by a Director. The Order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 19 established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. The function of certifying as to the accuracy of the yearly financial statement of the Armory Board was transferred to the Internal Audit Office. The executive

functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order Nos. 3 and 19 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Organization Order No. 3 established within the newly created Department of General Administration an Internal Audit Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Part IVB of Organization Order No. 3 and that portion of paragraph 4 of Commissioner's Or-

der No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof. Organization Order No. 50, dated December 31, 1974, established the Office of Budget and Management Systems, and transferred to that office the functions of the Municipal Audit Office. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1977, which Order established the Office of Budget and Revenue Development.

§ 31-1203. Retirement age; continuous employment requirements.

Any teacher who shall have reached the age of 62 may be retired by the Board of Education on its own motion, or shall be retired if application is made by the teacher. Any teacher who shall have reached the age of 70 shall be retired unless, in the judgment of two thirds of the Board of Education, such teacher should be longer retained for the good of the service; provided, that no sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been continuously employed as a teacher in the public schools of the District of Columbia from the time of his attainment of the age of 52 years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 3; June 11, 1926, 44 Stat. 728, ch. 556, § 1; 1973 Ed., § 31-703.)

§ 31-1204. Disability retirement; requirements.

Any teacher who shall have reached the age of 45, and who shall have been continuously employed in the public schools of the District of Columbia for not less than 10 years immediately prior to his retirement, or who shall have been continuously employed for not less than 15 years prior to his retirement and who by reason of accident or illness not due to vicious habits has become physically or mentally disabled and incapable of satisfactorily performing the duties of his position, may be retired by the Board of Education under the provisions hereinafter stated; provided, that absence of any teacher on authorized leave of absence without pay for a period not in excess of 2 years shall not constitute a break in continuous employment; provided further, that no teacher shall be retired by the Board of Education under the provisions of this section until said teacher shall have been examined under the direction of the health officer of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of two-thirds of the members of the Board of Education shall have been found to be physically or mentally incapacitated for efficient service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 4; June 11, 1926, 44 Stat. 728, ch. 556, § 1; 1973 Ed., § 31-704.)

§ 31-1205. Annuity allowance.

Every teacher who shall be retired under the provisions of § 31-1203 or § 31-1204 shall receive during the remainder of his life a combined annuity composed of:

(1) An annuity equal to 1% of his average annual salary received during the 10 years immediately preceding retirement for each year of his whole term of service after June 30, 1926;

(2) A sum equal to 1% of his average annual salary received during the 10 years immediately preceding retirement for each year of his whole term of service prior to July 1, 1926, but not to exceed 40 years; and

(3) An additional sum of \$15 for each year of said service, but in neither case to exceed 40 years, such annuity to be fixed at the nearest multiple of 12 cents and to be payable monthly and to cease and determine at his death. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 5; June 11, 1926, 44 Stat. 728, ch. 556, § 1; 1973 Ed., § 31-705.)

§ 31-1206. Minimum-service credit in cases of disability retirement.

In calculating, as provided in § 31-1205, the 3rd part of the annuity of a teacher retired under the provisions of § 31-1204, a minimum credit of 20 years shall be used in determining the sum allowable to a teacher with less than 20 years of service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 6; June 11, 1926, 44 Stat. 728, ch. 556, § 1; 1973 Ed., § 31-706.)

§ 31-1207. Appropriations for annuity; reserves; interest.

(a) The second and third parts of the annuity provided for by § 31-1205 shall be paid by appropriations from the same fund as the current expenses of the District of Columbia were paid on June 11, 1926, or may thereafter be paid.

(b) The reserves created as the result of such annual appropriations shall be held by the Treasurer of the United States separate from the fund created by the contributions of the teachers, and the fund shall be credited with interest at 4% per annum, compounded annually. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 7; June 11, 1926, 44 Stat. 728, ch. 556, § 1; 1973 Ed., § 31-707; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 146(c)(1).)

Section references. — This section is referred to in § 31-1223.

§ 31-1208. Credit for service outside District.

In computing length of service of retiring teachers credit may be given, year for year, but not to exceed 10 years, for public school service or its equivalent

outside the District of Columbia; provided, that no credit for service outside of the public schools of the District of Columbia shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement fund of the District of Columbia a sum equal to the contributions that would have been required of the teacher if such service had been rendered in the public schools of the District of Columbia, with interest thereon at 4% per annum, compounded annually, said contributions to be based on the average annual salary of the class to which the teacher is appointed; provided further, that when the average annual salary of the class exceeds \$2,000 the contributions shall be based on a salary of \$2,000; provided further, that if the teacher so elects he may deposit the required sum in the fund in any number of monthly installments not exceeding 100, with interest at 4% per annum, compounded annually; and provided further, that the provisions of this subchapter shall not apply to any teacher who receives an annuity from any state or municipality other than the District of Columbia, nor to allow any teacher more than one year's credit for all services rendered in any one fiscal year. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 8; June 11, 1926, 44 Stat. 729, ch. 556, § 1; 1973 Ed., § 31-708.)

§ 31-1209. Refund on leaving service; reinstatement.

(a) Upon separation of any teacher from the service of the public schools of the District of Columbia, except for retirement under § 31-1203 or § 31-1204, he shall receive the amount of his deductions, together with the interest then credited thereon.

(b) No teacher who shall withdraw the amount of his deductions under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him; provided, that the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding 100, with interest at 4% compounded annually, but no credit for previous service shall be given in any case of retirement where the teacher has been separated from teaching service in any public school system for more than 5 years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 9; June 11, 1926, 44 Stat. 729, ch. 556, § 1; 1973 Ed., § 31-709.)

§ 31-1210. Death of teacher — Designation of beneficiary.

Every teacher from whose salary retirement deductions are made in accordance with this subchapter shall be required to designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable in the event of the death of such teacher. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 10; June 11, 1926, 44 Stat. 729, ch. 556, § 1; Apr. 5, 1939, 53 Stat. 571, ch. 42, § 1; 1973 Ed., § 31-710.)

§ 31-1211. Same — Precedence of payments.

In the event of death of any such teacher the order of precedence of payments shall be as follows: first, to the beneficiary, or beneficiaries, designated in writing by the teacher and recorded on his or her individual account; second, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor, or administrator, of the estate; third, if there be no such beneficiary, or if an executor or administrator be not appointed within 6 months after the death of such teacher, payment shall be made into the registry of the court having probate jurisdiction. (Apr. 5, 1939, 53 Stat. 571, ch. 42, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 158(g); 1973 Ed., § 31-711.)

Cross references. — As to probate jurisdiction, see §§ 11-501 and 11-921.

§ 31-1212. Consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after January 15, 1920, as well as every person who on and after January 15, 1920, may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for in this subchapter; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this subchapter, notwithstanding the provisions of said Public Act No. 254, approved June 20, 1906, and of any other law, rule or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 11; June 11, 1926, 44 Stat. 730, ch. 556, § 1; 1973 Ed., § 31-712.)

References in text. — “Public Act No. 254, approved June 20, 1906,” referred to near the end of the section, refers to the Act of June 20, 1906, 34 Stat. 316, ch. 3446.

§ 31-1213. Discharge of teachers.

Nothing in this subchapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 12; June 11, 1926, 44 Stat. 730, ch. 556, § 1; 1973 Ed., § 31-713.)

§ 31-1214. Definitions.

The term “teacher,” under this subchapter, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are

established in the Act approved June 20, 1906, and acts amendatory thereof, except the employees of the Recreation Board and the Department of School Attendance and Work Permits; the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for services rendered in the public day schools of the District of Columbia, including basic salary, longevity allowance, session room allowance, and increase of compensation (bonus); and whenever the pronoun "his" occurs in this subchapter it shall be construed to mean both male and female teachers. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 13; June 11, 1926, 44 Stat. 730, ch. 556, § 1; 1973 Ed., § 31-714.)

References in text. — The "Act approved June 20, 1906," referred to near the beginning of the section, refers to the Act of June 20, 1906, 34 Stat. 316, ch. 3446.

§ 31-1215. Records to be kept by Mayor.

The Mayor of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 14; June 11, 1926, 44 Stat. 730, ch. 556, § 1; 1973 Ed., § 31-715; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 146(c)(2).)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1216. Rules and regulations.

The Mayor of the District of Columbia is hereby authorized to perform, or cause to be performed, any or all acts and the Council of the District of Columbia is hereby authorized to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this subchapter into full force and effect. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 16; June 11, 1926, 44 Stat. 731, ch. 556, § 1; 1973 Ed., § 31-717.)

Cross references. — As to authority of Council to adopt rules and regulations, see § 1-319.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(238) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818,

§ 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1217. Funds not subject to assignment, execution or levy.

None of the money mentioned in this subchapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 17; June 11, 1926, 44 Stat. 731, ch. 556, § 1; 1973 Ed., § 31-718.)

§ 31-1218. Application of subchapter — Annuities from other governments.

The provisions of this subchapter shall not apply to any teacher who receives an annuity from any state or municipality other than the District of Columbia. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 18; June 11, 1926, 44 Stat. 731, ch. 556, § 1; 1973 Ed., § 31-719.)

§ 31-1219. Same — Annuities under prior act.

The provisions of this subchapter shall apply to: (1) all teachers who were on the rolls of the public schools of the District of Columbia for the month of June, 1926, if otherwise eligible; and (2) all teachers who, on June 30, 1926, were receiving an annuity under the provisions of this subchapter, the annuity to be paid each such teacher after June 30, 1926, to be computed in the manner provided herein; provided, that nothing in this subchapter shall be construed to require a reduction in the amount of the annuity being paid to any teacher on July 1, 1926. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 19; June 11, 1926, 44 Stat. 731, ch. 556, § 1; 1973 Ed., § 31-720.)

Subchapter II. Retirement After June 30, 1946.

§ 31-1221. Salary deductions; deposit; purchase of annuity.

(a) Beginning on the first day of the first pay period which begins after December 31, 1969, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 7% of the teacher's annual salary; except that in the case of teachers hired on or after the first day of the first pay period that begins after October 29, 1996, there shall be deducted and withheld from the annual salary

of each teacher in the public schools of the District of Columbia an amount equal to 8% of the teacher's annual salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and withheld prior to July 1, 1946, under subchapter I of this chapter, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4% per annum, compounded annually up to July 1, 1946, and thereafter at 3% per annum, compounded annually from December 31st of the year in which the deductions are made; provided, that such interest shall not be credited after December 31, 1956, except that in the case of a teacher separated before he has completed 5 years of eligible service interest shall be credited to the date of separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier. These individual interest-bearing accounts shall be kept by the Custodian of Retirement Funds. After the end of the 90-day period beginning on November 17, 1979, any amounts deducted and withheld pursuant to this subsection shall be paid to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(b) Any teacher may at his option and under such regulations as may be prescribed by the Council of the District of Columbia deposit with the Custodian of Retirement Funds additional sums in multiples of \$25 but not to exceed 10% per annum of his annual salary, pay, or compensation for services rendered since March 1, 1920, which amount together with interest thereon computed in accordance with § 31-1244(a) shall, at the date of his retirement, be available to purchase an annuity as he shall elect in accordance with such rules and regulations as may be prescribed by the Council, in addition to the annuity provided by this subchapter; the purchase price of such annuity shall be based upon the interest rate computed in accordance with § 31-1244(a) and upon such table of mortality as shall from time to time be prescribed by the Council. In the event of death or separation from the service of such teacher before becoming eligible for retirement on annuity, the amounts so deposited with interest at 3% compounded annually from December 31st of the year in which the deposits are made to the date of such death or separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier shall be refunded in accordance with the provisions of §§ 31-1231 and 31-1232, respectively. A separate individual account shall be kept by the Custodian of Retirement Funds with respect to the voluntary deposits and interest of each teacher. (Aug. 7, 1946, 60 Stat. 875, ch. 779, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 21; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(1); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(d)(1); 1973 Ed., § 31-721; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(A), 253(a)(1); Mar. 24, 1990, D.C. Law 8-97, § 4, 37 DCR 1046; Apr. 9, 1997, D.C. Law 11-218, § 4(a), 43 DCR 6172.)

Cross references. — As to election of educational employees of the Teachers College to remain subject to provisions of subchapter, see § 31-1403.

Section references. — This section is referred to in §§ 1-627.1, 1-713, 31-1225, 31-1230, 31-1231, and 31-1244.

Effect of amendments. — D.C. Law 11-218 added the exception at the end of the first sentence in (a).

Emergency act amendments. — For temporary amendment of section, see § 2 of the Board of Education Early-Out Retirement for "ET" Employees Emergency Amendment Act of 1996 (D.C. Act 11-262, April 18, 1996, 43 DCR 2177).

For temporary amendment of section, see § 4(a) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and 4(a) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the application of the act.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-135. — Law 10-135, the "Full Funding of Pension Liability Retirement Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-515, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-239 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-218. — Law 11-218, the "New Hire Police Officers, Fire Fighters, and Teachers Pension Modification Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-316. The Bill was adopted on first and second readings on July 3, 1996 and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective on April 9, 1997.

Application of Law 11-218. — Section 7 of D.C. Law 11-218 provided that the act shall apply as of January 28, 1997.

Full Funding of Pension Liability Retirement Reform Amendment Act of 1994. — Section 311 of D.C. Law 10-135 amended (a)

by inserting "(or, with respect to each pay period which begins on or after October 1, 1995, 8 per centum)" following "7 %" in the first sentence.

Section 401 of D.C. Law 10-135 provided that notwithstanding any other law, title I, §§ 101(b)(1) and (2), and titles II and III shall apply to any action or transaction taken or undertaken with respect to the Police Officers and Fire Fighters' Retirement Fund, the Teachers' Retirement Fund and the Judges' Retirement Fund on and after October 1, 1995.

Section 501 of D.C. Law 10-135 provides that the act shall take effect on the later of: (1) completion of a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-2-33(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or (2) enactment by Congress of titles II and III of this act and of an amendment to D.C. Code § 11-1563 which amends the first sentence in subsection (a) by inserting after "per centum" the following: "(or, with respect to each pay period which begins on or after October 1, 1995, 4 ½ per centum)" and an amendment to D.C. Code § 11-1564(d)(1) which inserts after "United States Code," the following: "with respect to services performed before October 1, 1995, and equal to 4 ½ per centum of such salary, pay, or compensation with respect to services performed on or after October 1, 1995,".

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(239) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1222. Retirement credit for leave without pay.

(a) Any teacher who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of teachers, for the purpose of bargaining with the District of Columbia concerning grievances, disputes, hours of employment, or conditions of work, may, within 60 days after entering on such leave without pay, file with the Board of Education of the District of Columbia an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the teachers' retirement fund established pursuant to this subchapter, through the Board of Education, amounts equal to the retirement deductions plus additional amounts equivalent to such amounts, in lieu of District of Columbia contributions which would be applicable if he were in pay status. A teacher who is on approved leave without pay and serving as a full-time officer or employee of such an organization on May 22, 1970, may similarly make such election within 60 days after such date. If the election and all payments herein provided are not made, the teacher shall receive no credit for such periods of leave without pay occurring on or after May 22, 1970.

(b) A teacher may deposit, with interest computed in accordance with § 31-1244(b), an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, prior to May 22, 1970, as a full-time officer or employee of an organization composed primarily of teachers, and may receive full retirement credit for such period or periods of leave without pay. In the event of the death of such teacher, any individual entitled to annuity under this subchapter may make such deposit. (Aug. 7, 1946, ch. 779, § 1A; May 22, 1970, 84 Stat. 259; Pub. L. 91-263, § 3; 1973 Ed., § 31-721a; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(2).)

Section references. — This section is referred to in §§ 31-1225, and 31-1244.

§ 31-1223. Retirement and Annuity Fund; income from investments; separate accounts.

Until the end of the 90-day period beginning on November 17, 1979, the amounts so deducted and withheld from the annual salary of every teacher, and the amounts of additional voluntary deposits, shall be deposited in the Treasury of the United States to the credit of the Teachers' Retirement and Annuity Fund. As of July 1, 1946, there shall be transferred and credited to such fund the balances of funds held for the retirement of teachers under the provisions of §§ 31-1202 and 31-1207. The fund thus created shall be held and invested by the Secretary of the Treasury until paid out as hereinafter provided, and the income derived from such investment shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter, and for payment of administrative expenses incurred by the Mayor of the District of Columbia in placing in effect each annuity adjustment granted under § 31-1244. Separate accounts shall be maintained by the Treasury with respect to:

(1) The regular operations of the retirement system, exclusive of those incident to the voluntary deposits; and

(2) The voluntary deposits and the supplementary annuities and refunds resulting from such deposits. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 2; July 5, 1966, 80 Stat. 267, Pub. L. 89-494, § 2; 1973 Ed., § 31-722; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(b)(1)(B).)

Section references. — This section is referred to in §§ 1-713, 31-1225, and 31-1243.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1224. Voluntary and involuntary retirement.

(a) Any teacher who completes 5 years of eligible service and who is separated from the service: (1) after becoming 55 years of age and completing 30 years of service; (2) after becoming 60 years of age and completing 20 years of service; (3) after becoming 62 years of age; or (4) in the case of any teacher hired on or after the first day of the first pay period which begins after October 29, 1996, after completing 30 years of service; is entitled to an annuity.

(b) Any teacher who completes 5 years of eligible service and who is involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after: (1) completing 25 years of service; or (2) becoming 50 years of age and completing 20 years of service; is entitled to an annuity reduced by one sixth of 1% for each full month such teacher is under the age of 55 years at the date of his separation from the service.

(c) Repealed.

(d)(1) The length of a teacher's service shall be computed in accordance with § 31-1230.

(2) The amount of an annuity authorized by this section shall be computed in accordance with § 31-1226.

(3) Each annuity authorized by this section shall commence on the day after the teacher is separated from the service and shall terminate on the date the teacher dies.

(e) Any teacher who completes 5 years of vested service may voluntarily retire from the service on or before December 31, 1980, after completing 20 years of service and shall be entitled to an annuity computed in accordance with subsection (b) of this section; provided, that the amortization payment to the District of Columbia Retirement Board for the District of Columbia Teachers' Retirement Fund shall be made from appropriations of the Board of Education; except that any teacher hired on or after the first day of the first

pay period which begins after October 29, 1996, who completes 30 years of service shall be entitled to an annuity computed in accordance with § 31-1226.

(f)(1) In the event of a major reorganization, a major reduction in force, or a major transfer of functions in which a significant percentage of Board of Education employees will be separated or subject to an immediate reduction in the rate of basic pay or a furlough, the Board of Education is authorized to offer voluntary retirement to the following eligible teachers:

(A) Teachers who have completed 25 years of service; and

(B) Teachers who have reached 50 years of age and completed 20 years of service.

(2) Teachers who accept voluntary retirement under paragraph (1) of this subsection shall:

(A) Receive an annuity reduced by $\frac{1}{6}$ of 1% for each full month such teacher is under the age of 55 years at the date of his or her separation from the service; and

(B) Be eligible for the early out retirement incentive program established by § 31-1224. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 3; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 2; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(2); 1973 Ed., § 31-723; Mar. 4, 1981, D.C. Law 3-128, § 9, 28 DCR 246; Mar. 5, 1981, D.C. Law 3-133, § 5, 27 DCR 4417; May 21, 1988, D.C. Law 7-111, § 2, 35 DCR 2674; Sept. 26, 1995, D.C. Law 11-52, § 902, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-218, § 4(b), 43 DCR 6172.)

Section references. — This section is referred to in §§ 31-1225, 31-1226, and 31-1231.

Effect of amendments. — D.C. Law 11-52 added (f).

D.C. Law 11-218 added (a)(4); and added the exception at the end of (e).

Emergency act amendments. — For temporary amendment of section, see § 4(b) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and 4(b) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the application of the act.

Legislative history of Law 3-128. — Law 3-128 was introduced in Council and assigned Bill No. 3-394, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-337 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-133. — Law 3-133 was introduced in Council and assigned Bill No. 3-273, which was referred to the Com-

mittee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 29, 1980, and September 16, 1980, respectively. Signed by the Mayor on October 2, 1980, it was assigned Act No. 3-254 and transmitted to both Houses for Congress for its review.

Legislative history of Law 7-111. — Law 7-111 was introduced in Council and assigned Bill No. 7-393, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on March 1, 1988 and March 15, 1988, respectively. Signed by the Mayor on March 31, 1988, it was assigned Act No. 7-157 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-253. — Law 10-253, the "Multiyear Budget Spending Reduction and Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — See note to § 31-1241.

Legislative history of Law 11-218. — See note to § 31-1221.

Application of Law 11-218. — Section 7 of D.C. Law 11-218 provided that the act shall apply as of January 28, 1997.

§ 31-1225. Disability retirement.

(a) Any teacher who completes 5 years of eligible service, and who, before becoming eligible for retirement under the conditions defined in §§ 31-1221 to 31-1224, becomes physically or mentally disabled and incapable of satisfactorily performing the duties of his position by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of §§ 31-1226 and 31-1229 and beginning on the day after his pay ceases and he meets the service and disability requirements for title to annuity. Proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than 5 years next prior to becoming so disabled for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within 6 months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Director of the Department of Human Services of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

(b) Every annuitant retired under the provisions of this section, unless the disability for which retired be permanent in character, shall at the expiration of one year from the date of such retirement and annually thereafter, until reaching retirement age as defined in § 31-1224, be examined under the direction of the Director of the Department of Human Services of the District of Columbia in order to ascertain the nature and degree of the annuitant's disability, if any. If an annuitant shall recover before reaching retirement age he shall be reappointed by the Board of Education in accordance with such rules and regulations as the said Board may prescribe to the first position, equal or similar to any position in the public schools occupied by the annuitant before retirement, which becomes vacant after the date the Board of Education receives written notification from the Director of the Department of Human Services of the District of Columbia that the annuitant has recovered and is able to discharge his duties as a teacher in the public schools of the District of Columbia. Payment of the annuity shall be continued until the date of reappointment by the Board of Education. In the event that the annuitant refuses to accept the employment prescribed in this section no annuity shall be paid after the date of such refusal. Should the annuitant fail to appear for examination as required under this section, payment of the annuity shall be suspended until continuance of the disability shall have been satisfactorily established. Upon written recommendation of the Superintendent of Schools,

the Board of Education may order or direct at any time such medical or other examination as it shall deem necessary to determine the facts relative to the nature and degree of disability of any teacher retired on an annuity under this section.

(c) Notwithstanding the foregoing provisions of this section, if during any calendar year an annuitant who is receiving a disability annuity under this section and who has not reached retirement age (as defined in § 31-1224) receives income from wages or self-employment, or both, in an amount not less than 80% of the current rate of pay of the position occupied by the annuitant before retirement, the annuity of such annuitant shall be terminated by the Board of Education effective January 1st of the first calendar year after such calendar year, except that this sentence shall not apply with respect to income received during the year in which the annuitant retired. The annuity of any annuitant whose annuity is terminated under the preceding sentence shall be restored, at the rate which would have been in effect but for such termination, effective January 1st of any year following a year during which the amount of such annuitant's income from wages and self-employment is less than 80% of the current rate of pay of the position occupied by the annuitant before retirement, or effective immediately if the Board of Education determines that, outside of normal fluctuations in such annuitant's income, such annuitant's income is reduced to a level which on an annual basis is less than 80% of such current rate of pay.

(d) In all cases where the annuity is discontinued under the provisions of this section, so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest shall be charged against his individual account and, unless he shall become reemployed in a position under the purview of this subchapter, he shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits of § 31-1231 hereof; provided, however, that if such teacher were also receiving an annuity because of voluntary deposits made under the provisions of § 31-1221, such annuity may be continued or, at the option of the teacher, the actuarial reserve value of such annuity may be withdrawn in cash unless the teacher is reemployed in a position within the purview of this subchapter, in which case the amount of such reserve value shall be treated as a voluntary deposit under the provisions of § 31-1221. (Aug. 7, 1946, 60 Stat. 877, ch. 779, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 3; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(3); 1973 Ed., § 31-724; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 256.)

Section references. — This section is referred to in §§ 31-1226, 31-1227, 31-1229, and 31-1231.

Office of Director of Public Health abolished. — Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The

Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30,

1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions

and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 31-1226. Computation of annuity; options.

(a) Except as otherwise provided in this subchapter, every teacher who shall be retired under the provisions of § 31-1224 or § 31-1225 shall receive an annuity composed of: (1) the larger of: (A) one and one-half per centum of the average salary as defined in § 31-1235, multiplied by so much of the total service as does not exceed 5 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as does not exceed 5 years; plus (2) the larger of: (A) one and three-quarters per centum of the average salary multiplied by so much of the total service as exceeds 5 years but does not exceed 10 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds 5 years but does not exceed 10 years; plus (3) the larger of: (A) two per centum of the average salary multiplied by so much of the total service as exceeds 10 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds 10 years. Notwithstanding the preceding sentence, every teacher retired under the provisions of § 31-1224 or § 31-1226 who is hired on or after the first day of the first pay period that begins after October 29, 1996 shall receive an annuity equal to 2% of the average salary as defined in § 31-1235 multiplied by the number of years of the teacher's creditable service. Each annuity is stated as an annual amount, one twelfth of which, fixed at the nearest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued. Annuities payable to any retired teacher who has become eligible for retirement because of age as defined in § 31-1224 shall be payable during the lifetime of the annuitant. Annuities payable to any teacher retired on account of disability shall be subject to the conditions set forth under § 31-1225.

(b) Any teacher retiring under the provisions of § 31-1224 or § 31-1225 may, at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following:

(1) A reduced annuity and an annuity after death payable to the surviving widow or widower of such teacher. The life annuity of a teacher making such election, or any portion of such annuity designated by the teacher in writing for such purposes at the time of retirement, shall be reduced by 2½% of so much thereof as does not exceed \$3,600 and by 10% of so much thereof as exceeds

\$3,600. The widow or widower of a teacher making such election shall be entitled to an annuity equal to 55% of such life annuity, or designated portion thereof, except that if a retired teacher who has elected a reduced annuity as provided in this paragraph or in subsection (d) of this section dies and is survived by a widow or widower whom he or she married after retirement, such widow or widower is entitled to an annuity in an amount which would have been paid had the teacher been married to the widow or widower at the time of retirement, but only if: (A) such widow or widower was married to such individual for at least 2 years immediately preceding the teacher's death, or is the mother or father of issue of such marriage; and (B) such widow or widower elects this annuity instead of any other survivor benefit to which he or she may be entitled under this act or another retirement system for employees of the federal or District government. The annuity of a widow or widower entitled to an annuity under this paragraph shall begin on the day after the retiree dies. Such annuity and any right thereto shall terminate on the last day of the month before: (A) the widow or widower does; or (B) the widow or widower remarries before becoming 60 years of age. In the case of a surviving widow or widower whose annuity under this paragraph is terminated because of remarriage before becoming 60 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if:

(i) The surviving widow or widower elects to receive the annuity which was terminated instead of a survivor benefit to which the surviving widow or widower may be entitled, under this subchapter or another retirement system for employees of the federal or District government, by reason of the remarriage; and

(ii) Any lump sum paid on termination of the annuity is repaid to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(2) If unmarried and in good health, a reduced annuity payable to him during his life, and an annuity after his death payable to a survivor annuitant having an insurable interest in such teacher, duly designated in writing and filed with the Auditor of the District of Columbia at the time of retirement, during the life of such survivor annuitant equal to 55% of such reduced annuity. The annuity of the survivor annuitant shall commence on the day after the retired teacher dies, and such annuity and any right thereto shall terminate on the last day of the month before the death of the survivor annuitant. The annuity hereunder payable to the teacher shall be 90% of the life annuity otherwise payable if the survivor annuitant is the same age or older than the annuitant, or is less than 5 years younger than the annuitant; 85% if the survivor annuitant is 5 but less than 10 years younger; 80% if the survivor annuitant is 10 but less than 15 years younger; 75% if the survivor annuitant is 15 but less than 20 years younger; 70% if the survivor annuitant is 20 but less than 25 years younger; and 60% if the survivor annuitant is 25 or more years younger. No such election shall be valid until the retiring teacher shall have satisfactorily passed a physical examination under the direction of the Director of the Department of Human Services of the District of Columbia,

as prescribed by the Board of Education. No person shall be eligible to receive an annuity under subsection (b) of § 31-1231 based upon the service of the same teacher covering the same period of time.

(3) A reduced annuity of equivalent value providing for a life-insurance benefit payable in a lump sum at the time of the annuitant's death. The face amount of such life insurance may be in any amount which the retiring teacher shall designate at the time of retirement but shall not exceed his contributions accumulated with interest to the date of retirement. Payment of such insurance shall be made in accordance with the provisions of § 31-1232. Any annuitant who elects to receive the reduced annuity with fixed life-insurance benefits may reconvert the value of the life insurance to an additional annuity of equivalent value on any anniversary of the retirement date of said annuitant prior to reaching age 70.

(4) In the event an individual designated as a surviving widow or widower or as a survivor annuitant under this subsection predeceases the teacher designating such individual, the annuity of such teacher shall, effective the day after the death of such individual, be the amount it would have been if no such beneficiary had been named.

(c)(1)(A) The annuity of any person who now or hereafter is receiving or entitled to receive an annuity from the Teachers' Retirement and Annuity Fund shall be increased, effective on October 1, 1955, or on the commencing date of the annuity, whichever is later, in accordance with the following schedule:

If annuity commences between	Annuity not in excess of \$1,500 shall be increased by	Annuity in excess of \$1,500 shall be increased by
August 20, 1920, and June 30, 1955	12 per centum	8 per centum
July 1, 1955, and December 31, 1955 . .	10 per centum	7 per centum
January 1, 1956, and June 30, 1956	8 per centum	6 per centum
July 1, 1956, and December 31, 1956 . .	6 per centum	4 per centum
January 1, 1957, and June 30, 1957	4 per centum	2 per centum
July 1, 1957, and December 31, 1957 . .	2 per centum	1 per centum

(B) Such increase in annuity shall not exceed the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under this section, to \$4,104. The monthly installment of each annuity so increased shall be fixed at the nearest dollar.

(2) The increases provided by this subsection, when added to the annuities of retired employees, shall not operate to increase the annuities of their survivors, except that the annuity of any such survivor who becomes entitled to annuity shall be increased by the per centum provided in paragraph (1) of this subsection appropriate to the commencing date of such survivors annuity.

(d) A teacher who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to his spouse and who later marries may irrevocably elect, in a signed

writing filed with the Mayor of the District of Columbia within one year after he or she marries, a reduction in his or her current annuity and an annuity after death payable to his or her surviving widow or widower as provided in paragraph (1) of subsection (b) of this section. The reduced annuity is effective the first day of the month after such election is received by the Mayor. The election voids prospectively any election previously made under paragraph (2) or paragraph (3) of subsection (b) of this section.

(e)(1) Notwithstanding any other provision of this subchapter, other than this subsection, the monthly rate of annuity payable under this section shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act.

(2) Notwithstanding any other provisions of this subchapter, other than this subsection, the monthly rate of annuity payable under this section to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act, or 3 times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) The provisions of this subsection shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States, or the District of Columbia, an annuity or retired pay under any other civilian or military retirement system, benefits under Title II of the Social Security Act, a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act.

(4) An annuity payable from the Teachers' Retirement and Annuity Fund to a former teacher, which is based on a separation occurring prior to October 20, 1969, is increased by \$240.

(5) In lieu of any increase based on an increase under paragraph (4) of this subsection, an annuity payable from the Teachers' Retirement and Annuity Fund to the surviving spouse of a teacher or annuitant, which is based on a separation occurring prior to October 20, 1969, shall be increased by \$132.

(6) The monthly rate of an annuity resulting from an increase under paragraph (4) or (5) of this subsection shall be considered as the monthly rate of annuity payable under subsection (a) of this section for purposes of computing the minimum annuity under this subsection. (Aug. 7, 1946, 60 Stat. 878, ch. 779, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 4; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 23; July 2, 1956, 70 Stat. 487, ch. 497, § 1; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203(a); Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(4); May 22, 1970, 84 Stat. 258, Pub. L. 91-263, § 1(f); Oct. 21, 1972, 86 Stat. 1012, Pub. L. 92-518, title II, § 201(1), (2); 1973 Ed., § 31-725; Sept. 3, 1974, 88 Stat. 1050, Pub. L. 93-407, title III, § 301; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(c), 255(a); Apr. 9, 1997, D.C. Law 11-218, § 4(c), 43 DCR 6172.)

Section references. — This section is referred to in §§ 31-1224, 31-1225, 31-1228, 31-1229, 31-1230, 31-1231, and 31-1240.

Effect of amendments. — D.C. Law 11-218 inserted the present second sentence in (a).

Emergency act amendments. — For temporary amendment of section, see § 4(c) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 4(c) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the application of the act.

Legislative history of Law Law 11-218. — See note to § 31-1221.

References in text. — “This act,” referred to in subsection (b)(1)(B), is the Act of October 21, 1972, 86 Stat. 1012, Pub. L. 92-518.

“Title II of the Social Security Act,” referred to throughout subsection (e), is codified at 42 U.S.C. § 401 et seq.

Application of Law 11-218. — Section 7 of D.C. Law 11-218 provided that the act shall apply as of January 28, 1997.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Auditor abolished. — The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Auditor including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28,

1952, and effective September 2, 1952. The function of receiving written designation for survivor annuity, referred to in subsection (b)(2) of this section, was transferred from the Auditor to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20, dated November 10, 1952. Reorganization Order No. 20 was superseded by Organization Order No. 121, dated December 12, 1957. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked and replaced by Organization Order No. 3, dated December 13, 1967. Part IVC of the latter Order established a Finance Office within the newly created Department of General Administration, and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by paragraph 4, Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. Organization Order No. 50, dated December 31, 1974, established the Office of Budget and Management Systems, and transferred to that Office the functions of the Office of Budget and Financial Management. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Revenue Development.

Office of Director of Public Health abolished. — Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The

Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967.

Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 31-1227. Recomputation of benefits.

The annuities of all teachers retired prior to the effective date of this act shall be recomputed in accordance with the provisions of § 31-1225 within 90 days after March 6, 1952, retroactive to the effective date of this act, and no recomputation shall be made which will reduce the annuity received by any retired teacher; provided, that the average annual salary during any 5 consecutive years, specified in § 31-1225, upon which the annuity is based shall be within the last 10 years of allowable service in the public schools of the District of Columbia; provided further, that the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind. (Mar. 6, 1952, 66 Stat. 22, ch. 95, § 10; 1973 Ed., § 31-725a.)

References in text. — "The effective date of this act," referred to twice in this section, is prescribed by § 11 of the Act of March 6, 1952, 66 Stat. 22, ch. 95.

§ 31-1228. Annuity increase.

(a) The annuity of each person who, January 1, 1963, is receiving or entitled to receive an annuity from the District of Columbia Teachers' Retirement and Annuity Fund shall be increased by 5% of the amount of such annuity.

(b) The annuity of each person who receives or is entitled to receive an annuity from the District of Columbia Teachers' Retirement and Annuity Fund commencing during the period which begins on the day following January 1, 1963 and ends 5 years after such date, shall be increased in accordance with the following table:

	The annuity shall be increased by
If the annuity commences between	
January 2, 1963, and December 31, 1963	4 per centum.
January 1, 1964, and December 31, 1964	3 per centum.
January 1, 1965, and December 31, 1965	2 per centum.
January 1, 1966, and December 31, 1966	1 per centum.

(c) In lieu of any other increase provided by this section, the annuity of a survivor of a retired employee who received an increase under this section shall be increased by a percentage equal to the percentage by which the annuity of such employee was so increased.

(d) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The limitation contained in the next to the last sentence of § 31-1226(c) (1) shall not be effective on and after January 1, 1963.

(f) The increases provided by this section shall take effect on January 1, 1963, except that any increase under subsection (b) or (c) of this section shall take effect on the beginning date of the annuity.

(g) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar. (Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title II, § 201; 1973 Ed., § 31-725b.)

§ 31-1229. Annuity of teachers retired for disability.

The annuity of a teacher retiring under § 31-1225 shall be at least: (1) forty per centum of the average salary or; (2) the sum obtained under § 31-1226 after increasing his total service by the period elapsing between the date of separation and the date he attains the age of 60 years, whichever is the lesser. (Aug. 7, 1946, 60 Stat. 878, ch. 779, § 6; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 5; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; 1973 Ed., § 31-726.)

Section references. — This section is referred to in § 31-1225.

§ 31-1230. Basis for determining annuity amount.

(a) The years of service which form the basis for determining the amount of the annuity provided in § 31-1226(a) shall be computed from the date of original appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on May 1, 1952, as does not exceed 6 months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section; provided, that deposits equal to 5% of those portions of salary received between July 1, 1949, and May 1, 1952, for which service credit was not earned may be made, and service credit received accordingly. A teacher or former teacher who returns to duty after a period of separation is deemed, for the purpose of this section, to have been on a leave of absence without pay for that part of the period in which he or she was receiving benefits under subchapter I of Chapter 81 of Title 5, United States Code, or any earlier statute on which such subchapter is based. In computing an annuity under § 31-1226(a) the total service of a teacher shall include days of unused sick leave credited to him. No deposit may be required for days of unused sick leave included in a teacher's total service under the preceding sentence. Days of unused sick leave shall not be counted in determining a teacher's average salary or his eligibility for an annuity. In computing the length of service of retiring teachers credit may be given, year for year, for: (1) public school service or its equivalent outside the District of Columbia but not to exceed 10 years; (2) continuous temporary service in the public schools of the District of Columbia immediately prior to probationary appointment; (3) service in the government of the District of Columbia or the government of the United States allowable under subchapter III of Chapter 83 of Title 5, United States Code; (4) periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or

Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United States) prior to the date of the separation upon which title to annuity is based; except that, if a teacher is awarded retired pay on account of military service, his military service shall not be included unless such retired pay is awarded on account of a service-connected disability: (A) incurred in combat with an enemy of the United States; or (B) caused by an instrumentality of war and incurred in the line of duty during an enlistment or employment as provided in Veterans Regulation No. 1(a), part 1, paragraph 1, or is awarded under Title III of Public Law 810, 80th Congress; (5) all educational leaves of absence with part pay authorized by the Board of Education in accordance with §§ 1-613.1 to 1-613.3; and (6) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to appointment as a teacher in the public schools of the District of Columbia; provided, however, that that portion of the annuity which results from credit for service allowable under clauses (1) and (3) of this subsection shall be reduced by the amount of any annuity which the retired teacher is entitled to receive under any federal, state, or municipal retirement or pension system in respect to such service, except that such portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit which the teacher is required to make under the provisions of this section in order to obtain credit for such service; provided further, that no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with §§ 1-613.1 to 1-613.3, shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the Teachers' Retirement and Annuity Fund of the District of Columbia a sum equal to: (1) the accumulated contributions which he would have had credited to his individual account if such service had been rendered on active duty in the public schools of the District of Columbia, said contributions to be based on the average annual salary of the class to which the teacher is appointed; and (2) interest thereon computed in accordance with § 31-1244(b); provided further, that all contributions to the retirement fund made by any teacher on education leave with part pay shall be determined in accordance with the provisions of § 31-1221, but otherwise no provision of this subchapter shall be interpreted to deprive any teacher employed by the Board of Education of any rights or benefits allowable under §§ 1-613.1 to 1-613.3. If the teacher so elects he may deposit the required sum in the Teachers' Retirement and Annuity Fund in monthly installments, upon making a claim with the Mayor of the District of Columbia, or his designated agent. Except as otherwise provided in this subsection, this section shall not be construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

(b) A teacher who during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves

his position to enter the military service, as defined in this section, shall not be considered, for the purposes of this subchapter, as separated from his teaching position by reason of such military service, unless he shall apply for and receive a lump-sum benefit under this subchapter, except that such teacher shall not be considered as retaining his teaching position beyond 6 months after June 4, 1957, or the expiration of 5 years of such military service, whichever is later.

(c) Nothing in this subchapter shall affect the right of a teacher to retired pay, pension, or compensation in addition to the annuity herein provided.

(d) Notwithstanding the provisions of this section, any teacher who is entitled to purchase service credit under the provisions of § 31-1132(d) shall purchase such credit based on the salary received from the Board of Higher Education during the period of service to be credited. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 7; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 2; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(5); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(b); Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, §§ 201(3), 202(a)(1), 203(b); 1973 Ed., § 31-728; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(3); May 10, 1989, D.C. Law 7-231, § 34(a), 36 DCR 492.)

Section references. — This section is referred to in §§ 31-1224 and 31-1244.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

References in text. — “Veterans Regulation No. 1(a), part 1, paragraph 1,” referred to in subsection (a)(4)(B) of this section, was repealed by the Act of June 17, 1957, 71 Stat. 167, Pub. L. 85-56, title XXII, § 2202(129), (217).

“Title III of Public Law 810, 80th Congress,” referred to in subsection (a)(4)(B) of this section, refers to the Act of June 29, 1948, 62 Stat. 1087, ch. 708, title III, §§ 301 to 313, which was repealed by the Act of August 10, 1956, 70A Stat. 64, ch. 1041, § 53, and the Act of September 2, 1958, 72 Stat. 1569, Pub. L. 85-861, § 36A.

“Section 31-1132(d),” referred to in subsection

(d), was repealed by D.C. Law 4-78, effective March 16, 1982.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1231. Deferred annuity; annuity to survivors.

(a) Should any teacher to whom this subchapter applies, after completing 5 years of eligible service and before becoming eligible for retirement, become separated from the service, such teacher may elect to receive a deferred annuity, computed as provided in § 31-1226, beginning at the age of 62 years and terminating on the date of his death; provided, that any teacher who becomes separated from the public schools of the District of Columbia for other

than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section shall receive as soon as practicable after separation the refund of deductions, deposits, or redeposits with interest thereon (computed to the date of separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier), or any voluntary contributions made under the provisions of § 31-1221, with interest (computed to the date of separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier); provided further, that no teacher who shall withdraw the amount of his deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless he shall repay to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a) the amount so withdrawn by him (including the interest thereon) plus interest computed in accordance with § 31-1244(c): And provided further, that the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding 100.

(b)(1) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952, after completing at least 18 months of eligible service and is survived by a widow, or widower, such widow or widower shall be paid an annuity beginning the day after the teacher dies, equal to 55% of the amount of an annuity computed as provided in subsection (a) of § 31-1226 with respect to such teacher, except that in the computation of the annuity under such subsection the annuity of the teacher shall be at least the smaller of: (A) forty per centum of his average salary; or (B) the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age. Such annuity and any right thereto shall terminate on the last day of the month before: (A) the widow or widower dies; or (B) the widow or widower remarries before becoming 60 years of age. In the case of a widow or widower whose annuity under this paragraph is terminated because of remarriage before becoming 60 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if:

(i) The widow or widower elects to receive the annuity which was terminated instead of a survivor benefit to which the widow or widower may be entitled, under this subchapter or another retirement system for employees of the federal or District government, by reason of the remarriage; and

(ii) Any lump sum paid on termination of the annuity is repaid to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(2) If any teacher to whom this subchapter applies shall die after completing at least 18 months of eligible service or after having retired under the provisions of § 31-1224 or § 31-1225 and is survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of: (A) sixty per centum of the teacher's average salary divided by the number of children; (B) \$900; or (C) \$2,700 divided by the number of children. If such teacher is not

survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of: (A) seventy-five per centum of the teacher's average salary divided by the number of children; (B) \$1,080; or (C) \$3,240 divided by the number of children. The child's annuity shall commence on the first day after the teacher dies. Such annuity and the right thereto terminate on the last day of the month before the child: (i) becomes 18 years of age unless he is then a student as described or incapable of self-support; (ii) becomes capable of self-support after becoming 18 years of age unless he is then such a student; (iii) becomes 22 years of age if he is then such a student and capable of self-support; (iv) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or (v) dies or marries; whichever first occurs. Upon the death of the surviving wife or husband or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband, or child had not survived the teacher.

(3) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952, after completing at least 18 months of eligible service, and is not survived by a widow, a widower, and/or children, but is survived by dependent parents or a dependent father or a dependent mother, such surviving dependent parents or parent shall be paid an annuity, beginning the first day of the month following the death of the teacher, equal to 55% of the amount of an annuity computed as provided in subsection (a) of § 31-1226 with respect to such teacher, except that, in the computation of the annuity under such subsection, the annuity of the teacher shall be at least the smaller of 40% of his average salary, or the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age; provided, that such payments shall be made jointly to surviving dependent parents and payment of such annuity shall continue after the death of either dependent parent; provided further, that all such payments or any right thereto shall cease upon the death of both dependent parents.

(c) As used in this section:

(1) The term "widow" means a surviving wife of an individual, who either shall have been married to such individual for at least 2 years immediately preceding his death, or is the mother of issue by such marriage.

(2) The term "child" means:

(A) An unmarried child under 18 years of age, including:

(i) An adopted child; and:

(ii) A stepchild or recognized natural child who lived with the teacher in a regular parent-child relationship;

(B) Such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) Such unmarried child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. For the purpose of this paragraph and paragraph (2) of subsection (b) of this section, a

child whose 22nd birthday occurs before July 1st or after August 31st of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the 1st day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Mayor of the District of Columbia that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(3) The term “dependent parents” means the natural parents of a teacher who were receiving one half or more of their total income from said teacher immediately preceding the death of said teacher.

(4) The term “dependent father” or “dependent mother” means the natural father or natural mother of a teacher who was receiving one half or more of his or her total income from said teacher immediately preceding the death of said teacher.

(5) The term “widower” means the surviving husband of a teacher who was married to such teacher for at least 2 years immediately preceding her death or is the father of issue by such marriage.

(6) Questions of dependency and disability arising under this section shall be determined by the Board of Education and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203(b), (c), (d), (e); Sept. 2, 1964, 78 Stat. 886, Pub. L. 88-575, § 202; Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(6); May 22, 1970, 84 Stat. 258, Pub. L. 91-263, § 1(e); Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, § 201(4); 1973 Ed., § 31-729; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(D), (E), 253 (a)(4).)

Cross references. — As to adjustment of annuities on basis of price index, see § 31-1241.

Section references. — This section is referred to in §§ 31-1221, 31-1225, 31-1226, 31-1235, 31-1241, and 31-1244.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1232. Payment of beneficiaries.

(a) Under regulations prescribed by the Mayor of the District of Columbia,

a present or former teacher may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(b)(1) Lump-sum benefits authorized by subsections (c), (d), and (e) of this section shall be paid in the following order of precedence to the person or persons surviving the teacher and alive at the date title to the payment arises, and the payment bars recovery by any other person:

(A) To the beneficiary or beneficiaries designated by the teacher in a signed and witnessed writing received by the Mayor of the District of Columbia before his death;

(B) If there is no designated beneficiary, to the widow or widower of the teacher;

(C) If none of the above, to the child or children of the teacher and descendants of deceased children by representation;

(D) If none of the above, to the parents of the teacher or the survivor of them;

(E) If none of the above, to the duly appointed executor or administrator of the estate of the teacher;

(F) If none of the above, to such other next of kin of the teachers as the Mayor of the District of Columbia determines to be entitled under the laws of the domicile of the teacher at the date of his death.

(2) For the purpose of this subsection, the term "child" includes a natural child and an adopted child, but does not include a stepchild.

(c) If: (1) a teacher dies: (A) without a survivor; or (B) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed; or (2) a former teacher not retired dies, the lump-sum credit shall be paid.

(d) If all annuity rights under this subchapter based on the service of a deceased teacher terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(e) If an annuitant dies, any annuity accrued and unpaid shall be paid.

(f) For purposes of this section, the term "lump-sum credit" means the unrefunded amount consisting of:

(1) Retirement deductions made under this subchapter from the salary of a teacher;

(2) Amounts deposited into the teachers' retirement and annuity fund by a teacher covering earlier service; and

(3) Interest earned prior to the end of the 90-day period beginning on November 17, 1979, on the deductions and deposits made with respect to service which aggregates more than one year but excluding interest for the fractional part of a month in the total service. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 10; Mar. 6, 1952, 66 Stat. 21, ch. 95, § 9; Dec. 29, 1967, 81 Stat. 750, Pub. L. 90-231, § 1(7); 1973 Ed., § 31-730; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(5).)

Section references. — This section is referred to in §§ 31-1221, and 31-1226.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)) appropriate changes in terminology were made in this section.

§ 31-1233. Consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after the passage of this subchapter, as well as every person who hereafter may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for herein; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this subchapter, notwithstanding the provisions of the Act of June 20, 1906 (34 Stat. 316), and of any other law, rule, or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Aug. 7, 1946, 60 Stat. 880, ch. 779, § 11; 1973 Ed., § 31-731.)

§ 31-1234. Discharge of teacher.

Nothing in this subchapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 12; 1973 Ed., § 31-732.)

§ 31-1235. Definitions.

(a) The term “teacher,” under this subchapter, shall include all teachers employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in the District of Columbia Teachers’ Salary Act of 1945, as amended, except the employees of the Department of School Attendance and Work Permits; whenever the pronoun “his” occurs in this subchapter it shall be construed to mean both male and female; and the term “annual salary” shall be construed to mean the total annual income received during the fiscal year for service rendered in the public day schools (not including summer schools) of the District of Columbia, including basic salary, automatic increases, and longevity allowances, provided for in the District of Columbia Teachers’ Salary Act of 1945, as amended, and all wartime additional compensation or bonus, and this definition of “annual salary” shall not be construed to affect any deductions which have been made prior to July 1, 1946, from any teacher’s “annual salary” as defined in subchapter I of this chapter.

(b) The term “average salary” shall mean the largest annual rate resulting from averaging, over any period of 3 consecutive years of eligible service, or in the case of a survivor annuity under § 31-1231(b) based on service of less than 3 years, over the total eligible service in the public schools of the District of Columbia, a teacher’s rates of annual salary in effect during such period, with each rate weighted by the time it was in effect.

(c) For purposes of this subchapter, the term “eligible service” means service in the public schools of the District of Columbia under a temporary, probationary, or permanent appointment to a position, the rate of compensation of which is prescribed in the salary schedule adopted pursuant to §§ 1-612.11 and 1-618.16. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 13; June 4, 1957, 71 Stat. 48, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 751, Pub. L. 90-231, § 1(8); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(a); Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, § 202(a)(2); 1973 Ed., § 31-733; May 10, 1989, D.C. Law 7-231, § 34(b), 36 DCR 492.)

Section references. — This section is referred to in §§ 1-702 and 31-1226.

Legislative history of Law 7-231. — See note to § 31-1230.

References in text. — The “District of Co-

lumbia Teachers’ Salary Act of 1945, as amended,” referred to twice in subsection (a) of this section, was repealed by the Act of July 7, 1947, 61 Stat. 260, ch. 208, § 20.

§ 31-1236. Records and accounts; report to Congress.

The Mayor of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. Until such time as all amounts in the Teachers’ Retirement and Annuity Fund have been expended or transferred to the District of Columbia Teachers’ Retirement Fund established by § 1-713(a), the Mayor of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this subchapter, together with the total number of persons receiving annuities and the amounts paid them. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 14; 1973 Ed., § 31-734; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 146(a)(2).)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1237. Rules and regulations.

The Council of the District of Columbia is hereby authorized to perform, or cause to be performed, any or all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this subchapter into full force and effect. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 16; 1973 Ed., § 31-736.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(240) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 7(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1238. Funds not assignable or subject to execution.

Except as provided in the District of Columbia Spouse Equity Act of 1988, none of the money mentioned in this subchapter (including any assets of the District of Columbia Teachers' Retirement Fund established by § 1-713(a)) shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 17; 1973 Ed., § 31-737; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(b)(1)(F); Mar. 16, 1989, D.C. Law 7-214, § 5, 36 DCR 513.)

Legislative history of Law 7-214. — Law 7-214 was introduced in Council and assigned Bill No. 7-389, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January

6, 1989, it was assigned Act No. 7-289 and transmitted to both Houses of Congress for its review.

References in text. — The "District of Columbia Spouse Equity Act of 1988" is D.C. Law 7-214.

§ 31-1239. Applicability.

The provisions of this subchapter shall apply to all teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, if otherwise eligible; provided, that nothing in this subchapter shall require the reduction of any annuity any teacher on the rolls of the public schools of the District of Columbia for the month of June 1946, would be entitled to receive, under the provisions of subchapter I of this chapter, upon retirement. Subchapter I of this chapter shall not otherwise apply to teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, but such subchapter I of this chapter shall remain in force and effect with respect to teachers retired prior to July 1, 1946, subject to the provisions of § 31-1240. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 18; 1973 Ed., § 31-738.)

§ 31-1240. Recomputation of annuities.

The annuities of all teachers retired prior to July 1, 1946, shall be recomputed in accordance with the provisions of § 31-1226 within 90 days after August 7, 1946, retroactive to July 1, 1946, and no recomputation shall be made which will reduce the annuity received by any retired teacher; provided, that the average annual salary during any 5 consecutive years, specified in § 31-1226, upon which the annuity is based shall be within the last 10 years of allowable service in the public schools of the District of Columbia; provided further, that the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind. (Aug. 7, 1946, 60 Stat. 882, ch. 779, § 19; 1973 Ed., § 31-739.)

Section references. — This section is referred to in § 31-1239.

§ 31-1241. Adjustment of annuities on basis of price index; computation; definitions.

(a) Effective December 1, 1965, each annuity payable from the fund which has a commencing date not later than January 1, 1966, shall be increased by: (1) the per centum rise in the price index, adjusted to the nearest $\frac{1}{10}$ of 1%, determined by the Mayor of the District of Columbia on the basis of the annual average price index for calendar year 1962 and the price index for the month of July 1965; plus (2) $6\frac{1}{2}\%$ if the commencing date (or in the case of a survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred on or before October 1, 1956, or $1\frac{1}{2}\%$ if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after October 1, 1956. The month used in determining the increase based on the per centum rise in the price index under this subsection shall be the base month for determining the per centum change in the price index until the next succeeding increase occurs.

(b)(1) On January 1 of each year (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index for the preceding year by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

(2)(A) If (in accordance with paragraph (1) of this subsection) the Mayor determines in a year (beginning with 1999) that the per centum change in the price index for the preceding year indicates a rise in the price index, each annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to:

(i) In the case of an annuity having a commencing date on or before March 1 of such preceding year, the per centum change computed under paragraph (1) of this subsection, adjusted to the nearest $\frac{1}{10}$ of 1%; or

(ii) In the case of an annuity having a commencing date after March 1 of such preceding year, a pro rata increase equal to the product of:

(I) One-twelfth of the per centum change computed under paragraph (1) of this subsection, multiplied by

(II) The number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase,
adjusted to the nearest $\frac{1}{10}$ of 1%.

(B) On January 1, 1998 (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index published for December 1997 over the price index published for June 1997. If such per centum change indicates a rise in the price index, effective March 1, 1998:

(i) Each annuity having a commencing date on or before September 1, 1997, shall be increased by an amount equal to such per centum change,
adjusted to the nearest $\frac{1}{10}$ of 1%; and

(ii) Each annuity having a commencing date after September 1, 1997, and on or before March 1, 1998, shall be increased by a pro rata increase equal to the product of:

(I) One-sixth of such per centum change, multiplied by

(II) The number of months (not to exceed 6 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase,
adjusted to the nearest $\frac{1}{10}$ of 1%.

(b-1)(1) On January 1 of each year, or within a reasonable time thereafter, the Mayor shall determine the per centum change in the price index for the preceding year and by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

(2)(A) If, in accordance with paragraph (1) of this subsection, the Mayor determines in a year, beginning with 1997, that the per centum change in the price index for the preceding year indicates a rise in the price index, each annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to:

(i) In the case of an annuity having a commencing date on or before March 1 of the preceding year, the per centum change computed under paragraph (1) of this subsection, adjusted to the nearest $\frac{1}{10}$ of 1%; or

(ii) In the case of an annuity having a commencing date after March 1 of the preceding year, a pro rata increase equal to the product of $\frac{1}{12}$ of the per centum change computed under paragraph (1) of this subsection, multiplied by the number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1%.

(B) On January 1, 1996, or within a reasonable time thereafter, the Mayor shall determine the per centum change in the price index published for December 1995 or the price index published for June 1995. If such per centum change indicates a rise in the index, effective March 1, 1996;

(i) Each annuity having a commencing date on or before September 1, 1995, shall be increased by an amount equal to the per centum change, adjusted to the nearest $\frac{1}{10}$ of 1%; and

(ii) Each annuity having a commencing date after September 1, 1995, and on or before March 1, 1996, shall be increased by a pro rata increase equal

to the product of 1/6 of the per centum change, multiplied by the number of months (not to exceed 6 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest 1/10 of 1%.

(3) This subsection shall apply only to public school teachers hired after December 31, 1979.

(c) Eligibility for an annuity increase under this section shall be as provided in subsection (b)(2) of this section, except as follows:

(1) Effective from its commencing date, an annuity payable to an annuitant's survivor (other than a child entitled under § 31-1231(b)(2)), which annuity commences the day after the annuitant's death and after the effective date of the 1st increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death;

(2) For the purpose of computing the annuity of a child under § 31-1231(b)(2) that commences after October 31, 1969, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in § 31-1231(b)(2) shall be increased by the total per centum increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60% and 75% appearing in § 31-1231(b)(2) shall be increased by the total per centum allowed and in force to the annuitant under this section on or after such day.

(3) Each annuity increase payable from the fund to an annuitant hired on or after the first day of the first pay period which begins after October 29, 1996, or to such annuitant's beneficiary or survivor, shall in no event exceed 3% per annum.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except that such installments shall after adjustment reflect an increase of at least \$1.

(f) For purposes of this section, the term "price index" shall mean the Consumer Price Index (all items — United States city average) published monthly by the Bureau of Labor Statistics. The term "base month" shall mean the month for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase. (Aug. 7, 1946, ch. 779, § 21; Oct. 24, 1962, 76 Stat. 1236, Pub. L. 87-881, title II, § 202; July 5, 1966, 80 Stat. 266, Pub. L. 89-494, § 1; Dec. 29, 1967, 81 Stat. 751, Pub. L. 90-231, § 1(9); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(c); 1973 Ed., § 31-739a; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 251(a)(1), (b); Sept. 26, 1995, D.C. Law 11-52, § 806b, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-218, § 4(d), 43 DCR 6172; Apr. 9, 1997, D.C. Law 11-255, § 33, 44 DCR 1271; Aug. 5, 1997, 111 Stat. 719, Pub. L. 105-33, § 11013(b).)

Section references. — This section is referred to in § 31-1243.

Effect of amendments. — D.C. Law 11-218 added (c)(3).

D.C. Law 11-255 validated a previously made

technical and stylistic change in (b-1)(2)(B)(i).

Section 11013(b) of Pub. L. 105-33, 111 Stat. 718, rewrote (b).

Temporary amendment of section. — Section 206(b) of D.C. Law 12-58 rewrote (b).

Section 209(b) of D.C. Law 12-58 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 4(d) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 4(d) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the application of the act.

For temporary amendment of section, see § 206(b) of the Police Officer, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Emergency Act of 1997 (D.C. Act 12-155, October 1, 1997, 44 DCR 5896), and see § 206(b) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Congressional Review Emergency Act of 1997 (D.C. Act 12-240, January 13, 1998, 45 DCR 531).

Section 207 of D.C. Act 12-155 provides for the application of the act.

Legislative history of Law 10-135. — See note to § 31-1221.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-218. — See note to § 31-1221.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-58. — Law 12-58, the "Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-383. The Bill was adopted on first and second readings on September 24, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 22, 1997, it was assigned Act No. 12-189 and transmitted to both Houses of Congress for its review.

D.C. Law 12-58 became effective on March 20, 1998.

Application of Law 11-218. — Section 7 of D.C. Law 11-218 provided that the act shall apply as of January 28, 1997.

Application of Law 12-58. — Section 208 of D.C. Law 12-58 provided that the act shall apply as of October 1, 1997.

Full Funding of Pension Liability Reform Amendment Act of 1994. — Section 312 of D.C. Law 10-135 amends (b)(1) and (2) to read as follows:

"(b)(1) On January 1 of each year (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index for the preceding year by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

(2)(A) If (in accordance with paragraph (1) of this subsection) the Mayor determines in a year (beginning with 1997) that the per centum change in the price index for the preceding year indicates a rise in the price index, each annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to—

(i) In the case of an annuity having a commencing date on or before March 1 of such preceding year, the per centum change computed under paragraph (1), adjusted to the nearest 1/10 of 1%; or

(ii) In the case of an annuity having a commencing date after March 1 of such preceding year, a pro rata increase equal to the product of:

(I) One-twelfth of the per centum change computed under paragraph (1), multiplied by

(II) The number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest 1/10 of 1%.

(B) On January 1, 1996 (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index published for December 1995 over the price index published for June 1995. If such per centum change indicates a rise in the price index, effective March 1, 1996—

(i) Each annuity having a commencing date on or before September 1, 1995, shall be increased by an amount equal to such per centum change, adjusted to the nearest 1/10 of 1%; and

(ii) Each annuity having a commencing date after September 1, 1995, and on or before March 1, 1996, shall be increased by a pro rata increase equal to the product of

(I) One-sixth of such per centum change, multiplied by

(II) The number of months (not to exceed 6 months, counting any portion of a month as

an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest 1/10 of 1%.”

As to the application and effective date of D.C. Law 10-135, see notes to § 31-1221.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1242. Increased annuities for certain surviving spouses.

Effective on November 1, 1969, or the commencing date of the annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity payable from the District of Columbia Teachers' Retirement and Annuity Fund resulted from the death of: (1) a teacher prior to October 24, 1962; or (2) a retired teacher whose retirement was based on a separation from service prior to October 24, 1962; shall be increased by 20%. (Aug. 7, 1946, ch. 779, § 23; May 22, 1970, 84 Stat. 258, Pub. L. 91-263, § 1(g); 1973 Ed., § 31-739d.)

§ 31-1243. Application of amendment to § 31-1241.

The amendment made by Pub. L. 96-122, § 251(a)(1), to § 31-1241(b) shall apply to any increase after the effective date of such amendment in annuities payable from the District of Columbia Teachers' Retirement and Annuity Fund established by § 31-1223 or from the District of Columbia Teachers' Retirement Fund established by § 1-713(a), except that with respect to the first date after the effective date of such amendment on which the Mayor is to determine a per centum change, such per centum change shall be determined by computing the change in the price index published for the month immediately preceding such first date over the price index published for the last month before such effective date for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase under § 31-1241(b), as in effect immediately before the amendment of such section by Pub. L. 96-122, § 251(a)(1). (1973 Ed., § 31-739.1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 251(a)(2).)

§ 31-1244. Computation of interest.

(a) For purposes of determining the amount available to purchase an annuity under subsection (b) of § 31-1221, interest shall be deemed to accrue on deposits at the following rates for the following periods:

(1) Prior to the end of the 90-day period beginning on November 17, 1979, interest shall accrue at the rate of 3% per annum compounded as of December 31st of each year;

(2) For the period beginning at the end of the 90-day period beginning on November 17, 1979, and ending on September 30, 1981, interest shall accrue at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest $\frac{1}{8}$ of 1%);

(3) After October 1, 1981, interest shall accrue at an annual rate which (as determined by the Mayor of the District of Columbia) is equal to the average annual rate of return on investment (adjusted to the nearest $\frac{1}{8}$ of 1%) for the District of Columbia Teachers' Retirement Fund established by § 1-713.

(b) Interest required on deposits under § 31-1222(b) or § 31-1230, or under § 31-1251, shall be computed as follows:

(1) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest $\frac{1}{8}$ of 1%) for the District of Columbia Teachers' Retirement Fund (established by § 1-713) for the period beginning on the first day of the first month which begins after the midpoint of the period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the first payment if he makes installment deposits, except that:

(A) For so much of any such period which occurs between the end of the 90-day period beginning on November 17, 1979, and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest $\frac{1}{8}$ of 1%) shall be used in determining the interest rate to be paid on deposits; and

(B) For so much of any such period which occurs prior to the end of the 90-day period beginning on November 17, 1979, the rate of 3% a year, compounded annually, shall be used in determining the interest rate to be paid on deposits;

(2) Interest shall be payable for the period beginning on the first day of the first month which begins after the midpoint of the period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made;

(3) If a teacher elects to make his deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited.

(c) Interest required on deposits under § 31-1231(a) shall be computed as follows:

(1) Interest shall be paid at a rate which (as determined by the Mayor of the District of Columbia) is equal to the average rate of return on investment (adjusted to the nearest $\frac{1}{8}$ of 1%) for the District of Columbia Teachers' Retirement Fund (established by § 1-713) for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the 1st payment if he makes installment deposits, except that:

(A) For so much of any such period which occurs between the end of the 90-day period beginning on November 17, 1979, and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest $\frac{1}{8}$ of 1%) shall be used in determining the interest rate to be paid on deposits; and

(B) For so much of any such period which occurs prior to the end of the 90-day period beginning on November 17, 1979, the rate of 3% a year, compounded annually, shall be used in determining the interest rate to be paid on deposits;

(2) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made; and

(3) If a teacher elects to make his deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited. (1973 Ed., § 31-739e; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(6).)

Section references. — This section is referred to in §§ 31-1221, 31-1222, 31-1223, 31-1230, 31-1231, and 31-1251.

§ 31-1245. Employment of retired teachers.

Notwithstanding any other provision of law, the salary of any retired teacher who first becomes entitled to an annuity under this subchapter after November 17, 1979, and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such teacher's annuity under this subchapter and compensation for such employment is equal to the salary otherwise payable for the position held by such teacher. (1973 Ed., § 31-739f; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 257.)

Section references. — This section is referred to in § 1-711.

§ 31-1246. Waiver of annuity; revocation.

Any person entitled to annuity pursuant to the provisions of subchapter I of this chapter or this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the Mayor of the District of Columbia or his designated agent. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. (July 2, 1956, 70 Stat. 487, ch. 497, § 2; 1973 Ed., § 31-740.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1247. Annuity increase.

(a) The annuity of each retired employee, who on August 1, 1958, is receiving or is entitled to receive an annuity from the District of Columbia Teachers' Retirement and Annuity Fund based on service which terminated prior to October 1, 1956, shall be increased by 10%, but no such increase shall exceed \$500 per annum.

(b) The annuity otherwise payable from the District of Columbia Teachers' Retirement and Annuity Fund to: (1) each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956; and (2) each survivor of a retired employee described in subsection (a) of this section shall be increased by 10%. No increase provided by this subsection shall exceed \$250 per annum.

(c) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions. (Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 1; 1973 Ed., § 31-741.)

Section references. — This section is referred to in §§ 31-1249 and 31-1250.

§ 31-1248. Annuity for unremarried widow or widower.

The unremarried widow or widower of an employee: (1) who had completed at least 10 years of service creditable for retirement purposes under this subchapter; (2) who died before May 1, 1952; and (3) who was at the time of his death: (A) subject to an act under which annuities granted before May 1, 1952, were or are now payable from the District of Columbia Teachers' Retirement and Annuity Fund; or (B) retired under such act; shall be entitled to receive an annuity. In order to qualify for such annuity, the widow or widower shall have been married to the employee for at least 5 years immediately prior to his death and must be not entitled to any other annuity from the District of Columbia Teachers' Retirement and Annuity Fund based on the service of such employee. Such annuity shall be equal to one half of the annuity which the employee was receiving on the date of his death if retired, or would have been receiving if he had been retired for disability on the date of his death, but shall not exceed \$750 per annum and shall not be increased by the provisions of this or any other prior law. Any annuity granted under this section shall cease upon the death or remarriage of the widow or widower. (Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 2; 1973 Ed., § 31-742.)

Section references. — This section is referred to in §§ 31-1249 and 31-1250.

§ 31-1249. Effective dates of annuities provided by §§ 31-1247 and 31-1248; computation.

(a) An increase in annuity provided by subsection (a), or clause (1) of subsection (b), of § 31-1247 shall take effect on August 1, 1958. An increase in annuity provided by clause (2) of such subsection (b) shall take effect on the commencing date of the survivor annuity.

(b) An annuity provided by § 31-1248 shall commence on August 1, 1958, or on the first day of the month in which application for such annuity is received by the Mayor of the District of Columbia or his designated agent, whichever occurs later.

(c) The monthly installment of each annuity increased or provided by §§ 31-1247 to 31-1250 shall be fixed at the nearest dollar. (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 3; 1973 Ed., § 31-743.)

Section references. — This section is referred to in § 31-1250.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1250. Payment of annuity increase.

The annuities and increases in annuities provided by §§ 31-1247 to 31-1249 shall be paid from the District of Columbia Teachers' Retirement and Annuity Fund until such time as all amounts in such fund have been expended or transferred under § 1-713(b) to the District of Columbia Teachers' Retirement Fund established by § 1-713(a) and thereafter from the District of Columbia Teachers' Retirement Fund. Such annuities and increases in annuities shall terminate for each fiscal year beginning on or after July 1, 1960, for which the Congress has failed to make provision for the payment of like annuities and increases in annuities under the Act approved June 25, 1958 (72 Stat. 218), for such fiscal year. For any fiscal year for which such annuities and increases in annuities shall terminate for the reason set forth in this section, §§ 31-1247 to 31-1249 shall not be in effect and annuities and increases in annuities shall be determined and paid as though such sections had not been enacted. Nothing contained in this section shall be held or considered to prevent the payment of annuities and increases in annuities provided by §§ 31-1247 to 31-1249 for any fiscal year for which the Congress shall have made provisions for the payment of like annuities and increases in annuities under such Act approved June 25, 1958 (72 Stat. 218). (Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 4; 1973 Ed., § 31-744; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(b)(2).)

Section references. — This section is referred to in § 31-1249.

§ 31-1251. Retirement credit for leave without pay.

Any teacher who, on or after June 27, 1960, retires pursuant to this subchapter shall be entitled to have included in the years of service creditable to him for retirement purposes any period of authorized leave of absence which was taken by him without pay, and for educational purposes; except that credit for any such period shall be conditioned upon payment by such teacher to the Custodian of Retirement Funds (as defined in § 1-702(6)), for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a), of a sum equal to the accumulated contributions which would have been credited to his individual account if he had remained on active duty in the public schools of the District of Columbia during any such period plus interest computed in accordance with § 31-1244(b); provided, that in order to receive such retirement credit a teacher must produce evidence satisfactory to the Superintendent of Schools of the District of Columbia that the authorized leave of absence without pay was taken for educational purposes. (June 27, 1960, 74 Stat. 222, Pub. L. 86-525; 1973 Ed., § 31-745; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(3), 253(b).)

Section references. — This section is referred to in §§ 1-713 and 31-1244.

§ 31-1252. Tax-sheltered annuity program.

(a) Notwithstanding the provisions of §§ 1-612.11 and 1-618.16, and of any other law or regulation affecting the salary of teachers or school officers employed in the service of the public schools of the District of Columbia, the Mayor of the District of Columbia (hereinafter referred to as the "Mayor") is authorized to enter into an agreement with a teacher or school officer to reduce the salary of that teacher or school officer by an amount requested by that teacher or school officer, and to contribute that amount for the purchase of an annuity contract described in § 403(b) of the Internal Revenue Code of 1986 (relating to the taxability of beneficiaries of annuity plans) for that teacher or school official.

(b) The reduction in salary effected under an agreement authorized by this section shall not be considered in computing the salary for any teacher or school officer for any other purpose including, but not limited to, the determination of benefits or contributions under Chapters 81 (relating to workmen's compensation) and 87 (relating to life insurance) of Title 5 of the United States Code.

(c) The Mayor shall prescribe such regulations as he deems necessary to carry out the purposes of this section.

(d) For the purposes of this section, the term "teacher or school officer" includes all teachers, school officers, and other employees of the Board of Education of the District of Columbia who receive compensation according to

the salary schedules under §§ 1-612.11 and 1-618.16, and to whom the provisions of this subchapter are applicable.

(e) This section shall apply with respect to any pay period of any teacher or school officer beginning on or after the 180th day after April 26, 1972. (Apr. 26, 1972, 86 Stat. 131, Pub. L. 92-281, §§ 1 to 4; 1973 Ed. § 31-746; May 10, 1989, D.C. Law 7-231, § 35, 36 DCR 492.)

Legislative history of Law 7-231. — See note to § 31-1230.

References in text. — “§ 403(b) of the Internal Revenue Code of 1986,” referred to in subsection (a) of this section, is codified as 26 U.S.C. § 403(b).

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Subchapter III. Retirement Incentive Program.

§ 31-1271. Retirement Incentive Program.

(a) The Board of Education is authorized to establish a retirement incentive program (“program”) which shall apply to eligible employees under the personnel authority of the Board of Education. This authorization is conditioned on the requirement that no District employee who receives an incentive payment under the early out retirement program shall be reemployed with the District government, including the Board of Education, for 5 years, or hired or retained as a sole source personal services contractor for 5 years from the date of retirement.

(b) The Board of Education may exclude or limit positions from the program based on the needs of the Board.

(c) The program shall be effective from December 21, 1994, through September 30, 1995.

(d) The program shall be limited to employees retiring under the early out retirement provisions of 5 U.S.C. 8336(d)(2), employees who become eligible to retire on or before June 15, 1995, under the optional retirement provisions of 5 U.S.C. 8336(a), (b), or (f), and teachers who are eligible to retire under § 31-1221(f).

(e) The program shall offer a retirement incentive of 50% of an employee’s annual rate of basic pay paid from the employee’s salary or pay schedule which was in effect on the employee’s date of retirement, not to exceed \$24,000, to be paid in 24 equal installments.

(f) Retirement incentive payments shall be prorated in the case of a part-time employee.

(g) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

(h) No incentive payments shall be paid to:

(1) An employee retiring under the law enforcement provisions of 5 U.S.C. 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. 8336(d) (1), or the disability retirement provisions of 5 U.S.C. 8337; or

(2) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. 8334. (Sept. 26, 1995, D.C. Law 11-52, § 901, 42 DCR 3684.)

Emergency act amendments. — For temporary establishment of a District of Columbia Teachers' Defined Benefit Pension Program, see Title II, §§ 101-509 of the Police Officers', Firefighters' and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 43 DCR 4637).

For temporary amendment of section, see Title III, § 104 of the Police Officers', Firefighters' and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 43 DCR 4637).

Section 101 of Title IV of D.C. Act 11-369 provides for application of the act.

Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police

Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Section 7 of D.C. Act 12-10 provides for the application of the act.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-218. — See note to § 31-1221.

CHAPTER 13. INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL.

Sec.

31-1301. Authority to enter into agreement.

31-1302. Designated state official.

Sec.

31-1303. Filing and publication of contracts.

31-1304. Definition.

§ 31-1301. Authority to enter into agreement.

The Mayor of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia an agreement with any state or states legally joining therein in the form substantially as follows:

THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

Article I — Purpose, Findings, and Policy

1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party States find that included in the large movement of population among all sections of the Nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Agreement can increase the availability of educational manpower.

Article II — Definitions

As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. "Educational personnel" means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

2. "Designated State official" means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

3. "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

4. "State" means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

5. "Originating State" means a State (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

6. "Receiving State" means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III — Interstate Educational Personnel Contracts

1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated State officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated State official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on basis sufficiently comparable, even though not identical to that prevailing in his own State.

2. Any such contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

3. No contract made pursuant to this Agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating State approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any person qualified because of successful completion of a program prior to January 1, 1954.

5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate

or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

6. A contract committee composed of the designated State officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

Article IV — Approved and Accepted Programs

1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V — Interstate Cooperation

The party States agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this Agreement.

2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI — Agreement Evaluation

The designated State officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

Article VII — Other Arrangements

Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

Article VIII — Effect and Withdrawal

1. This Agreement shall become effective when enacted into law by two States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year

after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX — Construction and Severability

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters. (1973 Ed., § 13-1801; Dec. 7, 1974, 88 Stat. 1612, Pub. L. 93-515, title I, § 101.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1302. Designated state official.

The “designated state official” for the District of Columbia shall be the Superintendent of Schools of the District of Columbia. The Superintendent shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the Board of Education of the District of Columbia. (1973 Ed., § 31-1802; Dec. 7, 1974, 88 Stat. 1615, Pub. L. 93-515, title I, § 102.)

§ 31-1303. Filing and publication of contracts.

True copies of all contracts made on behalf of the District of Columbia pursuant to the Agreement shall be kept on file in the office of the Board of Education of the District of Columbia and in the office of the Mayor of the District of Columbia. The Superintendent of Schools shall publish all such contracts in convenient form. (1973 Ed., § 31-1803; Dec. 7, 1974, 88 Stat. 1615, Pub. L. 93-515, title I, § 103.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1304. Definition.

As used in the Interstate Agreement on Qualification of Educational Personnel, the term "Governor" when used with reference to the District of Columbia shall mean the Mayor of the District of Columbia. (1973 Ed., § 31-1804; Dec. 7, 1974, 88 Stat. 1615, Pub. L. 93-515, title I, § 104.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 14. PUBLIC HIGHER EDUCATIONAL INSTITUTIONS.

Subchapter I. Federal City College.

Sec.

31-1401. Definitions.

31-1402. Board of Higher Education — Composition; appointment; terms; compensation; removal; liability.

31-1403. Same — Powers and duties.

31-1404. Same — Facilities.

31-1405. Fiscal accountability.

31-1406. Appropriations.

31-1407. Land-grant colleges.

31-1408. Appropriation in lieu of donation of public lands.

31-1409. Federal City College and Washington Technical Institute administered as land-grant colleges; appropriations; allocations to Federal Ex-

Sec.

tension Service of Department of Agriculture.

31-1410. Grants to Federal City College and Washington Technical Institute.

31-1411. Construction of §§ 31-1407 and 31-1409.

31-1412. State consent requirement satisfied.

Subchapter II. Washington Technical Institute.

31-1421. Definitions.

31-1422. Board of Vocational Education — Composition; appointment; compensation; removal; liability.

31-1423. Same — Powers and duties.

31-1424. Same — Facilities.

31-1425. Fiscal accountability.

*Subchapter I. Federal City College.***§ 31-1401. Definitions.**

As used in this subchapter:

(1) The term “Federal City College” means the public college of arts and sciences established pursuant to this subchapter. Such college shall be organized and administered to provide:

(A) A 4-year program in the liberal arts and sciences acceptable toward a bachelor of arts degree, including courses in teacher education;

(B) A 2-year program:

(i) Which is acceptable for full credit toward a bachelor’s degree or for a degree of associate in arts, and which may include courses in business education, secretarial training, and business administration; or

(ii) In engineering, mathematics or the physical and biological sciences which is designed to prepare a student to work as a technician or at a semiprofessional level in engineering, sciences, or other technical fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(C) Educational programs of study as may be acceptable for a master’s degree; and

(D) Courses on an individual, noncredit basis to those desiring to further their education without seeking a degree.

(2) The term “Mayor” means the Mayor of the District of Columbia.

(3) The term “Board” means the Board of Higher Education established in § 31-1402.

(4) The term “Board of Education” means the Board of Education of the District of Columbia established by § 31-101. (Nov. 7, 1966, 80 Stat. 1426, Pub. L. 89-791, title I, § 101; 1973 Ed., § 31-1601.)

References in text. — The Federal City College, referred to throughout this subchapter, has been absorbed into the University of the District of Columbia pursuant to Chapter 15 of this title.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1402. Board of Higher Education — Composition; appointment; terms; compensation; removal; liability.

(a) The Federal City College shall be under the control of a Board of Higher Education, which shall consist of 9 members of whom not less than 5 shall have been residents of the District of Columbia for a period of not less than 3 years immediately prior to their appointments. The members of the Board (including all members appointed to fill vacancies on such Board) shall be appointed by the Mayor. The members of the Board shall select a chairman from among their number. Such members shall be appointed for terms of 3 years; except that the terms of office of the members 1st taking office shall expire, as designated by the Mayor at the time of appointment, 3 at the end of 1 year, 3 at the end of 2 years, and 3 at the end of 3 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term. Members of the Board shall serve without compensation, but may be reimbursed for their travel expenses, including per diem in lieu of subsistence, as authorized by § 5703 of Title 5, United States Code, for persons serving the government without compensation.

(b) The Mayor shall have the power to remove any member of the Board at any time for adequate cause, which relates to his character or to his efficiency as a member, after notice and opportunity for hearing.

(c) The members of the Board shall not be personally liable in damages for any official action of the Board in which such members participate, nor shall they be liable for any costs that may be taxed against them or the Board on account of any such official action by them as members of the Board, but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits against the municipality; nor shall the Board or any of its members be required to give any bond or security for costs or damages on any appeal whatever. (Nov. 7, 1966, 80 Stat. 1426, Pub. L. 89-791, title I, § 102; 1973 Ed., § 31-1602.)

Cross references. — As to abolition of Board of Higher Education, see § 31-1517.

Section references. — This section is referred to in §§ 31-1401 and 31-1502.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 31-1517.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Personal liability of president. — The refusal of the president of Federal City College to reopen the case of a dismissed college employee does not render the president individually liable to the dismissed employee. *Pinkney v. District of Columbia*, 439 F. Supp. 519 (D.D.C. 1977).

§ 31-1403. Same — Powers and duties.

(a) The Board is vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Federal City College;

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Federal City College;

(3) To appoint and compensate, without regard to the civil service laws or Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code, a President for the Federal City College;

(4) To employ and compensate such officers as it determines necessary for the Federal City College and such educational employees for the Federal City College as the President thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to: (A) the civil service laws; (B) Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code (relating to classification of positions in government service); (C) §§ 6301 through 6305 and 6307 through 6311 of Title 5, United States Code (relating to annual and sick leave for federal employees); (D) Chapter 15 and §§ 7324 through 7327 of Title 5, United States Code (relating to political activities of government employees); (E) § 3323 and subchapter III of Chapter 83 of Title 5, United States Code (relating to civil service retirement); and (F) §§ 3326, 3501, 3502, 5531 through 5533, and 6303 of Title 5, United States Code (relating to dual pay and dual employment); but the employment and compensation of such officers and educational employees shall be subject to: (i) Sections 7902, 8101 through 8138, and 8145 through 8150 of Title 5, United States Code, and §§ 292 and 1920 through 1922 of Title 18, United States Code (relating to compensation for work injuries); (ii) Chapter 87 of Title 5, United States Code (relating to government employees group life insurance); (iii) Chapter 89 of Title 5, United States Code (relating to health insurance for government employees); and (iv) §§ 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of Title 5, United States Code (relating to veteran's preference).

Subject to the approval of the Mayor, the compensation schedules for such officers and employees shall be fixed and adjusted from time to time consistent with the public interest and in accordance with rates for comparable types of positions in like institutions of higher education. Salary levels shall be determined based on duties, responsibilities, and qualifications. The Board, upon the recommendations of the president of the college, shall establish, with the approval of the Mayor and without regard to the provisions of any other law, retirement and leave systems for such officers and employees which shall be comparable to such systems in like institutions of higher education;

(5) To employ and compensate noneducational employees of the Board and of the Federal City College in accordance with:

(A) The civil service laws;

(B) Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code (relating to classification of positions in government service);

(C) Section 3323 and subchapter III of Chapter 83 of Title 5, United States Code (relating to civil service retirement);

(D) Sections 7902, 8101 through 8138, and 8145 through 8150 of Title 5, United States Code, and §§ 292 and 1920 through 1922 of Title 18, United States Code (relating to compensation for work injuries);

(E) Chapter 87 of Title 5, United States Code (relating to government employees group life insurance);

(F) Chapter 89 of Title 5, United States Code (relating to health insurance for government employees);

(G) Sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of Title 5, United States Code (relating to veteran's preference); and

(H) Any other laws applicable to noneducational employees of the Board of Education;

(6) To fix, from time to time, tuition to be paid by students attending the Federal City College. Tuition charged nonresidents shall be fixed in such amounts as will, to the extent feasible, approximate the cost to the District of Columbia of the services for which such charge is imposed. Receipts from the tuition charged students attending the college shall be deposited to the credit of the General Fund of the District of Columbia;

(7) To fix, from time to time, fees to be paid by students attending the Federal City College. Receipts from such fees shall be deposited into a revolving fund in a private depository in the District, which fund shall be available, without fiscal year limitation, for such purposes as the Board shall approve. The Board is authorized to make necessary rules respecting deposits into and withdrawals from such fund;

(8) To transmit annually to the Mayor estimates of the appropriation required for the Federal City College for the ensuing year;

(9) To accept services and moneys, including gifts or endowments, from any source whatsoever, for use in carrying out the purposes of this subchapter. Such moneys shall be deposited in the Treasury of the United States to the credit of a trust fund account which is hereby authorized and may be invested and reinvested as trust funds of the District of Columbia. The disbursement of

the moneys from such trust funds shall be in such amounts, to such extent, and in such manner as the Board, in its judgment, may determine necessary to carry out the purposes of this subchapter;

(10) To submit to the Mayor recommendations relating to legislation affecting the administration and programs of the Federal City College;

(11) To make such rules and regulations as the Board deems necessary to carry out the purposes of this subchapter;

(12) To assume control of the District of Columbia Teachers College established pursuant to § 31-117, from the Board of Education at such time as may be mutually agreed upon by such Boards and approved by the Mayor. At such time, the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available for such Teachers College are authorized to be transferred to, and brought under the control of, such Board of Higher Education, except that the laboratory schools shall remain under the control and management, and the employees assigned to such schools shall remain subject to the supervision of, the Board of Education. The noneducational employees of the Teachers College at the time the control of such Teachers College is assumed by the Board of Higher Education, shall retain all benefits provided by any law applicable to noneducational employees of the Board of Education, and shall be subject to any benefits provided for noneducational employees of the Board of Higher Education. The educational employees of the Teachers College at the time the control of such College is assumed by the Board of Higher Education shall be subject to the same benefits provided for all educational employees of the Board of Higher Education pursuant to paragraph (4) of this subsection, except that such educational employees may elect, within 90 days of such time, to remain subject to the provisions of subchapter II of Chapter 12 of this title;

(13) To provide for the crediting to educational employees of the Teachers College, pursuant to the leave system established for educational employees of the Board of Higher Education under this title, leave accumulated pursuant to the provisions of § 31-1028.

(b) A person shall, at the time of his registration to attend the Federal City College, be considered to be a legal resident of the District of Columbia for purposes of paragraph (6) of subsection (a) of this section if:

(1) Such person is domiciled in the District of Columbia on the date of such registration and has been so domiciled during all of the 3-month period immediately preceding such date; and

(2) In case such person on such date: (A) has not attained 21 years of age; (B) has not been relieved of the disabilities of minority by order of a court of competent jurisdiction; and (C) has a living parent or a court-appointed guardian or custodian; there is domiciled in the District of Columbia on such date an individual who is the parent or court-appointed guardian or custodian of such person, and who has been so domiciled for all of the 3-month period immediately preceding such date. (Nov. 7, 1966, 80 Stat. 1427, Pub. L. 89-791, title I, § 103; 1973 Ed., § 31-1603.)

Cross references. — As to abolition of Board of Higher Education, see § 31-1517.

As to ceremonial expenses, see § 31-2214.

As to official expenses, see § 31-2215.

Section references. — This section is referred to in § 31-1405.

References in text. — “Section 3306 of Title 5, United States Code,” referred to in subsections (a)(4)(iv) and (a)(5)(G), was repealed by the Act of February 10, 1978, 92 Stat. 25, Pub. L. 95-228.

“Section 3364 of Title 5, United States Code,” referred to in subsections (a)(4) and (a)(5)(G), was repealed by the Act of December 31, 1975, 89 Stat. 1057, Pub. L. 94-183.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 31-1517.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Regulations concerning termination of employee. — The dismissal of an employee of Federal City College did not violate Board of

Higher Education regulations requiring that the notice of termination contain a statement of reasons and be specific and in detail, where the notice sent to the dismissed employee specifically stated that an indictment against him provided the basis for termination. *Pinkney v. District of Columbia*, 439 F. Supp. 519 (D.D.C. 1977).

Where an employee of Federal City College was wrongfully denied right to a post-termination hearing, and that denial deprived him of an opportunity to clear his name and the chance of convincing appropriate authorities that he should be retained in the college's employ, the nature of the deprivation required remanding the case to the Board of Higher Education since it, and not the court, is the body charged with the responsibility of making personnel decisions according to best interests of the college. *Pinkney v. District of Columbia*, 439 F. Supp. 519 (D.D.C. 1977).

No expectation of continued employment. — An employee of Federal City College does not have a reasonable expectation of continued employment amounting to property protected by the due process clause. *Pinkney v. District of Columbia*, 439 F. Supp. 519 (D.D.C. 1977).

Once an employment contract expires, Federal City College is free to decide not to reappoint an employee if it so chooses. *Pinkney v. District of Columbia*, 439 F. Supp. 519 (D.D.C. 1977).

Personnel records. — A dismissed employee of Federal City College is not entitled to recover from officials on theory that they wrongfully contributed to the threatened publication of employee's dismissal to prospective employers, where there is no indication that the college did anything more than retain allegedly defamatory statements in its files. *Pinkney v. District of Columbia*, 439 F. Supp. 519 (D.D.C. 1977).

Cited in *Roberson v. District of Columbia Bd. of Higher Educ.*, App. D.C., 359 A.2d 28 (1976).

§ 31-1404. Same — Facilities.

The Mayor and the Board of Education may furnish to the Board, upon request of such Board, such space and facilities in private buildings or in public buildings of the government of the District of Columbia, records, information, services, personnel, offices, and equipment as may be available and which are necessary to enable the Board properly to perform its functions under this subchapter. (Nov. 7, 1966, 80 Stat. 1429, Pub. L. 89-791, title I, § 104; 1973 Ed., § 31-1604.)

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the

University of the District of Columbia convened its first meeting. See § 31-1517.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1405. Fiscal accountability.

All obligations and disbursements for the purpose of this subchapter shall be incurred, made, and accounted for in the same manner as other obligations and disbursements for the District of Columbia and, except as provided in paragraph (9) of subsection (a) of § 31-1403, under the direction and control of the Mayor. (Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 105; 1973 Ed., § 31-1605.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of Government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1406. Appropriations.

There is authorized to be appropriated from the revenues of the District of Columbia an amount not to exceed \$50,000,000 to carry out the purposes of this subchapter and subchapter II of this chapter. The authorization made by this section shall include any amounts made available pursuant to § 9-219. (Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791, title III, § 301(a); 1973 Ed., § 31-1606.)

§ 31-1407. Land-grant colleges.

In the administration of: (1) the Act of August 30, 1890 (7 U.S.C. §§ 321 to 326, and 328) (known as the Second Morrill Act); (2) the 10th paragraph under the heading "Emergency Appropriations" in the Act of March 4, 1907 (7 U.S.C. § 322) (known as the Nelson Amendment); (3) section 22 of the Act of June 29, 1935 (7 U.S.C. § 329) (known as the Bankhead-Jones Act); (4) the Act of March 4, 1940 (7 U.S.C. §§ 1621 to 1627); (5) the Agricultural Marketing Act of 1946 (7 U.S.C. §§ 1621 to 1629); and (6) section 31-1408; the Federal City College and the Washington Technical Institute shall each be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance

with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308) (known as the First Morrill Act); and the term “state” as used in the laws and provisions of law listed in the preceding clauses of this section shall include the District of Columbia. (Nov. 7, 1966, Pub. L. 89-791, title I, § 107; June 20, 1968, 82 Stat. 241, Pub. L. 90-354, § 1; Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title IV, § 401(a); 1973 Ed., § 31-1607.)

Section references. — This section is referred to in §§ 31-1410, 31-1411, and 31-1412.

§ 31-1408. Appropriation in lieu of donation of public lands.

In lieu of extending to the District of Columbia those provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308), relating to donations of public lands or land scrip for the endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, there is authorized to be appropriated to the District of Columbia the sum of \$7,241,706. Amounts appropriated under this section shall be held and considered to have been granted to the District of Columbia subject to those provisions of that Act applicable to the proceeds from the sale of land or land scrip. (Nov. 7, 1966, Pub. L. 89-791, title I, § 108(b); June 20, 1968, 82 Stat. 241, Pub. L. 90-354, § 1; 1973 Ed., § 31-1608.)

Section references. — This section is referred to in §§ 31-1407, 31-1410, and 31-1411.

§ 31-1409. Federal City College and Washington Technical Institute administered as land-grant colleges; appropriations; allocations to Federal Extension Service of Department of Agriculture.

(a) In the administration of the Act of May 8, 1914 (7 U.S.C. §§ 341-346, 347a-349) (known as the Smith-Lever Act):

(1) The Federal City College and the Washington Technical Institute shall each be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301-305, 307, 308); and

(2) The term “state” as used in such Act of May 8, 1914, shall include the District of Columbia, except that the District of Columbia shall not be eligible to receive any sums appropriated under 7 U.S.C. § 343.

(b) In lieu of an authorization of appropriations for the District of Columbia under 7 U.S.C. § 343, there is authorized to be appropriated to the District of Columbia such sums as may be necessary to provide cooperative agricultural extension work in the District of Columbia under such Act. For the fiscal years ending June 30, 1969, and June 30, 1970, sums appropriated under this subsection may be used to pay the total cost of providing such extension work; and for each fiscal year thereafter such sums may be used to pay no more than one half of such cost. Any reference in such Act (other than 7 U.S.C. § 343) to

funds appropriated under such Act shall in the case of the District of Columbia be considered a reference to funds appropriated under this subsection.

(c) Four per centum of the sums appropriated under subsection (b) of this section for each fiscal year shall be allotted to the Federal Extension Service of the Department of Agriculture for administrative, technical, and other services provided by the Service in carrying out the purposes of this section. (Nov. 7, 1966, Pub. L. 89-791, title I, § 109; June 20, 1968, 82 Stat. 241, Pub. L. 90-354, § 1; Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title IV, § 401(b); 1973 Ed., § 31-1609.)

Section references. — This section is referred to in §§ 31-1410, 31-1411, and 31-1412.

to throughout subsection (b), means the Act of May 8, 1914, codified in §§ 341 to 346 and 347a to 349 of Title 7, United States Code.

References in text. — “Such Act” referred

§ 31-1410. Grants to Federal City College and Washington Technical Institute.

Grants to the District of Columbia under the acts referred to in § 31-1407 and under § 31-1409(b) and the earnings of sums appropriated under § 31-1408 shall be shared equally between the Federal City College and the Washington Technical Institute. (Nov. 7, 1966, Pub. L. 89-791, title I, § 110; Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title IV, § 401(c); 1973 Ed., § 31-1610.)

Section references. — This section is referred to in § 31-1411.

§ 31-1411. Construction of §§ 31-1407 and 31-1409.

Sections 31-1407 and 31-1409 provide that the Washington Technical Institute shall be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862, for the purpose of enabling the Washington Technical Institute to share, under § 31-1410, with the Federal City College:

(1) Grants under the acts referred to in § 31-1407;

(2) Grants under § 31-1409(b); and

(3) Earnings of sums appropriated under § 31-1408. (Nov. 7, 1966, Pub. L. 89-791, title I, § 111; Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title IV, § 401(c); 1973 Ed., § 31-1611.)

References in text. — “The Act of July 2, 1862,” referred to in this section, is known as

the First Morrill Act and is codified in 7 U.S.C. §§ 301 to 305, 307, and 308.

§ 31-1412. State consent requirement satisfied.

The enactment of §§ 31-1407 and 31-1409 shall, as respects the District of Columbia, be deemed to satisfy any requirement of state consent contained in any of the laws or provisions of law referred to in such sections. (Nov. 7, 1966, Pub. L. 89-791, title I, § 112; June 20, 1968, 82 Stat. 242, Pub. L. 90-354, § 1;

Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title IV, § 401(c); 1973 Ed., § 31-1612.)

Subchapter II. Washington Technical Institute.

§ 31-1421. Definitions.

As used in this subchapter:

(1) The term "Washington Technical Institute" means the vocational and technical school established pursuant to this subchapter. Such institute shall provide:

(A) Vocational and technical education designed to fit individuals for useful employment in recognized occupations; and

(B) Vocational and technical courses on an individual, noncredit basis.

(2) The term "Mayor" means the Mayor of the District of Columbia.

(3) The term "Vocational Board" means the Board of Vocational Education established by § 31-1422.

(4) The term "Board of Education" means the Board of Education of the District of Columbia established by § 31-101. (Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title II, § 201; 1973 Ed., § 31-1621.)

Cross references. — As to authorization of appropriations for carrying out purpose of this subchapter, see § 31-1406.

As to provisions of subchapter I applicable to Washington Technical Institute, see §§ 31-1407 to 31-1412.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1422. Board of Vocational Education — Composition; appointment; compensation; removal; liability.

(a) The Washington Technical Institute shall be under the control of a Board of Vocational Education which shall consist of 9 members appointed by the President of the United States. Of the 9 members, at least 6 shall be selected from industry. The members of the Vocational Board shall select a chairman from among their own number. The members of the Vocational Board shall be appointed for terms of 3 years; except that the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, 3 at the end of one year, 3 at the end of 2 years, and 3 at the end of 3 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term. A vacancy in the Vocational Board shall be filled in the same manner as the original appointment was made.

Members of the Vocational Board shall serve without compensation, but may be reimbursed for their travel expenses, including per diem in lieu of subsistence, as authorized by § 5703 of Title 5, United States Code, for persons serving the government without compensation.

(b) The President of the United States may remove, in accordance with the provisions of this subsection, any member of the Vocational Board for adequate cause affecting his character and efficiency as a member. If the President determines that, with respect to any such member, there is adequate cause affecting his character and efficiency as a member, the President may appoint a special investigating board, consisting of not more than 3 members, to consider the matter. The investigating board, in considering such matter, shall hold public hearings and, on the basis thereof, report to the President with respect to their findings of fact and recommendations. Following the receipt by him of such report, the President may remove such member from office.

(c) The members of the Vocational Board shall not be personally liable in damages for any official action of the Vocational Board in which such members participate, nor shall they be liable for any costs that may be taxed against them or the Vocational Board on account of any such official action by them as members of the Vocational Board, but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits against the municipality; nor shall the Vocational Board or any of its members be required to give any bond or security for costs or damages on any appeal whatever. (Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title II, § 202; 1973 Ed., § 31-1622.)

Cross references. — As to abolition of Vocational Board, see § 31-1517.

Section references. — This section is referred to in §§ 31-1421 and 31-1502.

Editor's notes. — The Board of Higher

Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 31-1517.

§ 31-1423. Same — Powers and duties.

(a) The Board is hereby vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Washington Technical Institute;

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Washington Technical Institute;

(3) To appoint and compensate, without regard to the civil service laws or Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code, a President for the Washington Technical Institute;

(4) To employ and compensate such officers as it determines necessary for the Washington Technical Institute, and such educational employees for the Washington Technical Institute as the president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to: (A) the civil service laws; (B) Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code (relating to classification of positions in government service); (C) sections 6301 through 6305 and 6307 through 6311 of Title 5, United States Code (relating to annual

and sick leave for federal employees); (D) Chapter 15 and §§ 7324 through 7327 of Title 5, United States Code (relating to political activities of government employees); (E) § 3323 and subchapter III of Chapter 83 of Title 5, United States Code (relating to civil service retirement); and (F) §§ 3326, 3501, 3502, 5531 through 5533, and 6303 of Title 5, United States Code (relating to dual pay and dual employment); but the employment and compensation of such officers and educational employees shall be subject to: (i) Sections 7902, 8101 through 8138, and 8145 through 8150 of Title 5, United States Code, and §§ 292 and 1920 through 1922 of Title 18, United States Code (relating to compensation for work injuries); (ii) Chapter 87 of Title 5, United States Code (relating to government employees group life insurance); (iii) Chapter 89 of Title 5, United States Code (relating to health insurance for government employees); and (iv) §§ 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of Title 5, United States Code (relating to veteran's preference). Subject to the approval of the Mayor, the compensation schedules for such officers and employees shall be fixed and adjusted from time to time consistent with the public interest and in accordance with rates for comparable types of positions in like technical institutes. Salary levels shall be determined based on duties, responsibilities, and qualifications. The Vocational Board, upon the recommendations of the President of the Washington Technical Institute, shall establish, with the approval of the Mayor and without regard to the provisions of any other law, retirement and leave systems for such officers and employees which shall be comparable to such systems in like technical institutes;

(5) To employ and compensate noneducational employees of the Vocational Board and the Washington Technical Institute in accordance with:

(A) The civil service laws;

(B) Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code (relating to classification of positions in government service);

(C) Section 3323 and subchapter III of Chapter 83 of Title 5, United States Code (relating to civil service retirement);

(D) Sections 7902, 8101 through 8138, and 8145 through 8150 of Title 5, United States Code, and §§ 292 and 1920 through 1922 of Title 18, United States Code (relating to compensation for work injuries);

(E) Chapter 87 of Title 5, United States Code (relating to government employee's group life insurance);

(F) Chapter 89 of Title 5, United States Code (relating to health insurance for government employees);

(G) Sections 1302, 2108, 3305, 3306, 3308 through 3320, 3351, 3363, 3364, 3501 through 3504, 7511, 7512, and 7701 of Title 5, United States Code (relating to veteran's preference); and

(H) Any other laws applicable to noneducational employees of the Board of Education;

(6) To fix, from time to time, tuition to be paid by students attending the Washington Technical Institute. Tuition charged nonresidents shall be fixed in such amounts as will, to the extent feasible, approximate the cost to the District of Columbia of the services for which such charge is imposed. Receipts

from the tuition charged students attending the institute shall be deposited to the credit of the General Fund of the District of Columbia;

(7) To fix, from time to time, fees to be paid by students attending the Washington Technical Institute. Receipts from such fees shall be deposited into a revolving fund in a private depository in the District, which fund shall be available, without fiscal year limitation, for such purposes as the Vocational Board shall approve. The Vocational Board is authorized to make necessary rules respecting deposits into and withdrawals from such fund;

(8) To transmit annually to the Mayor estimates of the appropriation required for the Washington Technical Institute for the ensuing year;

(9) To accept services and moneys, including gifts or endowments, from any source whatsoever, for use in carrying out the purposes of this subchapter. Such moneys shall be deposited in the Treasury of the United States to the credit of a trust fund account which is hereby authorized and may be invested and reinvested as trust funds of the District of Columbia. The disbursement of the moneys from such trust funds shall be in such amounts, to such extent, and in such manner as the Vocational Board, in its judgment, may determine necessary to carry out the purposes of this subchapter;

(10) To submit to the Mayor recommendations relating to legislation affecting the administration and programs of the Washington Technical Institute;

(11) To make such rules and regulations as the Vocational Board deems necessary to carry out the purposes of this subchapter.

(b) A person shall, at the time of his registration to attend the Washington Technical Institute, be considered to be a legal resident of the District of Columbia for purposes of paragraph (6) of subsection (a) of this section if:

(1) Such person is domiciled in the District of Columbia on the date of such registration and has been so domiciled during all of the 3-month period immediately preceding such date; and

(2) In case such person on such date: (A) has not attained 21 years of age; (B) has not been relieved of the disabilities of minority by order of a court of competent jurisdiction; and (C) has a living parent or a court-appointed guardian or custodian; there is domiciled in the District of Columbia on such date an individual who is the parent or court-appointed guardian or custodian of such person, and who has been so domiciled for all of the 3-month period immediately preceding such date. (Nov. 7, 1966, 80 Stat. 1431, Pub. L. 89-791, title II, § 203; 1973 Ed., § 31-1623.)

Cross references. — As to provisions of subchapter I applicable to Washington Technical Institute, see §§ 31-1407 to 31-1412.

As to abolition of Vocational Board, see § 31-1517.

As to ceremonial expenses, see § 31-2214.

As to official expenses, see § 31-2215.

Section references. — This section is referred to in § 31-1425.

References in text. — “Section 3306 of Title 5, United States Code,” referred to in subsections (a)(4)(iv) and (a)(5)(G), was repealed by

the Act of February 10, 1978, 92 Stat. 25, Pub. L. 95-228.

“Section 3364 of Title 5, United States Code,” referred to in subsections (a)(4) and (a)(5)(G), was repealed by the Act of December 31, 1975, 89 Stat. 1057, Pub. L. 94-183.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 31-1517.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Cardinale v. Washington Technical Inst.*, 500 F.2d 791 (D.C. Cir. 1974).

§ 31-1424. Same — Facilities.

The Mayor and the Board of Education may furnish to the Vocational Board, upon request of such Board, such space and facilities in private buildings or in public buildings of the government of the District of Columbia, records, information, services, personnel, offices, and equipment as may be available and which are necessary to enable the Vocational Board properly to perform its functions under this subchapter. (Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791, title II, § 204; 1973 Ed., § 31-1624.)

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 31-1517.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1425. Fiscal accountability.

All obligations and disbursements for the purpose of this subchapter shall be incurred, made, and accounted for in the same manner as other obligations and disbursements for the District of Columbia and, except as provided in paragraph (9) of subsection (a) of § 31-1423, under the direction and control of the Mayor. (Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791, title II, § 205; 1973 Ed., § 31-1625.)

Cross references. — As to provisions of subchapter I applicable to Washington Technical Institute, see §§ 31-1407 to 31-1412.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 15. PUBLIC POSTSECONDARY EDUCATION REORGANIZATION.

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31-1502. Definitions.

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31-1541. Purposes.

31-1542 to 31-1548. [Repealed].

31-1549. Review of records.

31-1550. Preferential tuition for District of Columbia residents.

31-1551. Mayoral stipends.

31-1552. Full faith and credit of the District of Columbia not pledged.

31-1553. [Repealed].

Subchapter VI. Establishment of District of Columbia School of Law Within the University of the District of Columbia.

31-1561, 31-1562. [Repealed].

Subchapter VII. Provision of Tuition Grants.

31-1571. Definitions.

31-1572. Criteria for tuition grant eligibility.

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Subchapter I. General Provisions.

§ 31-1501. Declaration of purpose.

It is the intent of Congress to authorize a public land-grant university through the reorganization of the existing local institutions of public postsecondary education in the District of Columbia. It is the clear and specific intent of the Congress that vocational and technological education, as well as liberal arts, sciences, teacher education, and graduate and postgraduate studies, within the University be given at all times its proper priority in terms of funding with other units within the University, and that the land-grant funds be utilized by the University in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308) (known as the First Morrill Act). (1973 Ed., § 31-1701; Oct. 26, 1974, 88 Stat. 1423, Pub. L. 93-471, title I, § 102.)

Intent of Council. — Section 2 of the Act of September 9, 1975, D.C. Law 1-12, and § 2 of the Act of November 1, 1975, D.C. Law 1-36,

both provided that it was the intent of the Council of the District of Columbia to approve the Congressional intent expressed in this sec-

tion, and to provide a range of programs and studies designed to reach the widest possible number of citizens and residents of the District of Columbia.

Nonresident students. — Public Law 102-111, 105 Stat. 563, the District of Columbia Appropriations Act, 1992, provided that the public education appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 1992, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area.

Appropriations authorized. — Public Law 104-194, 110 Stat. 2359, the District of Columbia Appropriations Act, 1997, provided \$69,801,000 and 917 full-time equivalent positions (including \$38,479,000 and 572 full-time equivalent positions from local funds, \$11,747,000 and 156 full-time equivalent posi-

tions from Federal funds, and \$19,575,000 and 189 full-time equivalent positions from other funds) for the University of the District of Columbia; provided, that not to exceed \$2,500 for the President of the University of the District of Columbia shall be available for expenditures for official purposes.

Award of funds. — Section 139 of Pub. L. 101-168, the District of Columbia Appropriations Act, 1990, provided that of the funds appropriated in Pub. L. 100-202 for carrying out part B of title VII of the Higher Education Act that remain available for obligation, \$6,700,000 shall be awarded without regard to § 701(B), § 721(B), and § 721(C) of said Act to the consortium of institutions of higher education in the Washington, D.C. metropolitan area for the purpose of constructing and equipping an academic research library to link the library and information resources of the universities participating in the consortium.

Establishment of District of Columbia Advisory Committee on Education. — See Mayor's Order 89-256, November 7, 1989.

Cited in *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

§ 31-1502. Definitions.

For the purpose of this chapter:

(1) The term "Trustees" means the Board of Trustees established under subchapter II of this chapter.

(2) The term "Chief Executive Officer" means the chief executive and administrative officer of the University.

(3) The term "University" means the University of the District of Columbia authorized and directed to be established under subchapter II of this chapter.

(4) The term "academic and administrative head" means the academic and administrative head of each of the components of the University.

(5) The term "Mayor" means the Office of the Mayor of the District of Columbia established by § 1-241.

(6) The term "Council" means the Council of the District of Columbia established by § 1-221.

(7) The term "Board of Higher Education" means the Board of Higher Education established under § 31-1402.

(8) The term "Vocational Board" means the Board of Vocational Education established under § 31-1422.

(9) The term "Board" means the District of Columbia Board of Education established under § 31-101.

(10) The term "financial institution" means an insured bank as defined in § 3 of the Federal Deposit Insurance Act, or a savings and loan association as defined in § 401 of the National Housing Act.

(11) The term "component" means that segment of the whole University such as a school, college, branch or campus, which, because of its nature, the

Board of Trustees specifies as constituting an identifiable entity for the purpose of, but not limited to, being administered by an academic and administrative head.

(12) The term “University of the District of Columbia School of Law” (“School of Law”) means the institution that had been established under § 31-1543(b) as the District of Columbia School of Law. Any reference to a degree holder of the School of Law shall include any person who received a degree from the Antioch School of Law during the period when it was operated as a part of the Antioch University, as well as any person who received a degree after the establishment of the public School of Law under § 31-1543 and persons who receive a degree from the University of the District of Columbia School of Law.

(13) “State” means any of the 50 states of the United States in addition to the District of Columbia, Puerto Rico, and the Virgin Islands of the United States. (1973 Ed., § 31-1702; Oct. 26, 1974, 88 Stat. 1424, Pub. L. 93-471, title I, § 103; Nov. 1, 1975, D.C. Law 1-36, § 3, 22 DCR 2909; Aug. 1, 1996, D.C. Law 11-152, § 301(a), 43 DCR 2978.)

Effect of amendments. — D.C. Law 11-152 added (12) and (13).

Emergency act amendments. — For temporary amendment of section, see § 301(a) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(a) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for the application of the act.

Legislative history of Law 1-36. — See note to § 31-1511.

Legislative history of Law 11-152. — Law 11-152, the “Fiscal Year 1996 Budget Support Act of 1996,” was introduced in Council and

assigned Bill No. 11-655, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D. C. Law 11-152 became effective on August 1, 1996.

References in text. — “Section 3 of the Federal Deposit Insurance Act,” referred to in paragraph (10), is codified at 12 U.S.C. § 1813. “Section 401 of the National Housing Act,” referred to in paragraph (10), was codified at 12 U.S.C. § 1724, and was repealed by the Act of August 9, 1989, 103 Stat. 363, Pub. L. 101-73.

Section 31-1543, referred to twice in (12), was repealed by D.C. Law 11-152, 43 DCR 2978.

Subchapter II. University of the District of Columbia.

§ 31-1511. Establishment of Board of Trustees and University.

(a) There is hereby established a body corporate by name of the Board of Trustees of the University of the District of Columbia and by that name and style shall have perpetual succession. It shall be charged with the responsibility of governing the University of the District of Columbia and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by this section. Pursuant to this section and §§ 31-1516 and 31-1533, it shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; and to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction; to make, deliver, and receive deeds, leases and other instruments and to take title to real and other property in its own name; and to adopt, prescribe, amend,

repeal, and enforce such bylaws, rules, and regulations as it may deem necessary for the governance and administration of the University; provided, however, that contracting for the purchase or disposal of goods and services shall be carried out by the Office of Contracting and Procurement on behalf of the Board of Trustees.

(b) There is hereby authorized to be established an independent agency of the government of the District of Columbia known as the University of the District of Columbia which shall be governed by the Board of Trustees as established in subsection (a) of this section.

(c) The Board of Trustees shall consist of 15 voting members selected in the following manner:

(1) Eleven members shall be appointed by the Mayor with the advice and consent of the Council.

(2) One member shall be a full-time student in good standing at the University elected by secret ballot by the student community at an election at which each registered student at the University shall be entitled to one vote.

(3) Each of the 3 remaining members shall be a holder of a degree from the University of the District of Columbia or from one or more of its predecessor institutions, including Miner Teachers College, Wilson Teachers College, District of Columbia Teachers College, Washington Technical Institute, or Federal City College, and shall be elected by a postal ballot election at which each living person who holds a degree from any of the foregoing institutions shall be sent a ballot and shall be entitled to vote.

(4) The Board of Trustees shall be responsible for the efficient and fair conduct of the elections for student and alumni Trustees pursuant to paragraphs (2) and (3) of this subsection. The elections shall be governed by election rules adopted by the Board of Trustees in accordance with subchapter I of Chapter 15 of Title 1. The initial rules shall be adopted by the Board of Trustees within 100 days of February 27, 1990, and shall include provisions for nomination of candidates by petition and may also provide for a nominating committee which, if it is appointed, shall submit for inclusion on the ballot twice as many names of nominees as there are positions to be filled. The Board of Trustees may, in its discretion, seek and receive advice and assistance from the Board of Elections and Ethics in preparing the election rules. The Board of Elections and Ethics may, by agreement with the Board of Trustees of the University, furnish other assistance requested by the Board of Trustees.

(d) The student member of the Board of Trustees shall serve for a term of one year, beginning on May 15th following his or her election.

(e) Except as provided in § 31-1512(l), each nonstudent member of the Board of Trustees shall serve for a 5-year term, beginning on May 15th following his or her election or confirmation by the Council.

(f) A member of the Board of Trustees who has completed a full 5-year term in accordance with subsection (e) of this section may be reappointed or re-elected to serve 1 additional term, after which the former member may not become a Trustee by election or by appointment until May 15th of the 5th year following the year in which the former member left the Board. Service pursuant to § 31-1512(l) for the remainder of the term of a Trustee who has

died or resigned shall not, by itself or in conjunction with other service, constitute a bar to the re-election or reappointment of a person who has served as a Trustee.

(g) Each member of the Board of Trustees serving on February 27, 1990, shall continue to serve until May 15th following the conclusion of his or her previously established term.

(h) Repealed.

(i) When the term of one or more Trustees appointed by the Mayor with the advice and consent of the Council is due to expire on May 15th in any year, the Mayor shall transmit to the Council, not later than February 17th of that year, the nomination of a person to succeed each Trustee whose term is due to expire that year. The Council shall act on each timely nomination not later than April 15th of that year, and if no action is taken by the Council by April 15th of that year, the nomination shall be deemed approved.

(j) A chairperson and a vice-chairperson of the Board of Trustees:

(1) Shall be chosen by a majority vote of the Trustees;

(2) Shall serve as chairperson or vice-chairperson until May 15 next following his or her election to that office; and

(3) May be re-elected as chairperson or vice-chairperson if still a member of the Board of Trustees.

(k) A member of the Board of Education shall not serve as a Trustee of the University. Except as provided in subsection (l) of this section a paid officer or employee of the University of the District of Columbia shall not serve as a Trustee. A retired officer or employee of the University of the District of Columbia, shall, however, be eligible to serve as a Trustee. A Trustee shall forfeit his or her membership on the Board upon failure to maintain the qualifications required by this subsection.

(l) The Chief Executive Officer of the University shall be a non-voting ex officio member of the Board of Trustees.

(m)-(n) Repealed. (1973 Ed., § 31-1711; Oct. 26, 1974, 88 Stat. 1424, Pub. L. 93-471, title II, § 201; Sept. 9, 1975, D.C. Law 1-12, § 3(a), (b), 22 DCR 1806; Nov. 1, 1975, D.C. Law 1-36, § 4, 23 DCR 2911; Apr. 6, 1977, D.C. Law 1-99, § 2(b), 23 DCR 8729; Feb. 27, 1990, D.C. Law 8-69, § 2, 36 DCR 7737; Oct. 15, 1993, D.C. Law 10-38, § 2, 40 DCR 5819; Aug. 1, 1996, D.C. Law 11-152, § 301(b), 43 DCR 2978; Apr. 12, 1997, D.C. Law 11-259, § 314(a), 44 DCR 1423.)

Section references. — This section is referred to in §§ 1-1462, 31-1512, and 47-1812.11.

Effect of amendments. — D.C. Law 11-152 deleted "or a member of the Board of Governors of the District of Columbia School of Law" following "Board of Education" in the first sentence in (k).

D.C. Law 11-259 added the exception at the end of the last sentence in (a).

Emergency act amendments. — For temporary amendment of section, see § 301(b) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26,

1996, 43 DCR 2412), and § 201(b) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for the application of the act.

Legislative history of Law 1-12. — Law 1-12 was introduced in Council and assigned Bill No. 1-75, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on May 13, 1975 and May 27, 1975, respectively. Signed by the Mayor on June 13, 1975, it was assigned Act

No. 1-18 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-36. — Law 1-36 was introduced in Council and assigned Bill No. 1-115, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on July 15, 1975 and July 29, 1975, respectively. Signed by the Mayor on August 25, 1975, it was assigned Act No. 1-50 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-99. — Law 1-99 was introduced in Council and assigned Bill No. 1-300, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on July 27, 1976 and September 15, 1976, respectively. Signed by the Mayor on October 18, 1976, it was assigned Act No. 1-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-69. — Law 8-69 was introduced in Council and assigned Bill No. 8-232, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on September 26, 1989, and October 10, 1989, respectively. Approved without the signature of the Mayor on November 1, 1989, it was assigned Act No. 8-105 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-10. — D.C. Law 10-10, the "Board of Trustees of the University of the District of Columbia Term Hold-over Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-262. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 8, 1993, it was assigned Act No. 10-37 and transmitted to both Houses of Congress for its review. D.C. Law 10-10 became effective on July 31, 1993.

Legislative history of Law 10-38. — D.C. Law 10-38, the "Board of Trustees of the University of the District of Columbia Term Hold-over Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-272, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on June 29, 1993, and July 13,

1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-71 and transmitted to both Houses of Congress for its review. D.C. Law 10-38 became effective on October 15, 1993.

Legislative history of Law 11-152. — See note to § 1502.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

Diversity jurisdiction. — The Board of Trustees is an arm of the District of Columbia and is not subject to diversity jurisdiction. *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

Because an alter ego of a state is not a citizen of that state whether or not sovereign immunity has been waived, a state's waiver cannot create diversity jurisdiction. *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

Waiver of sovereign immunity. — Any waiver of the Board's sovereign immunity against suit in D.C. courts should not, without a more definite indication, be construed to waive sovereign immunity against suit in federal court. *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

Section 12-309 not applicable. — Section 12-309, mandating notice requirements in actions against the District of Columbia, does not apply to actions against Board of Trustees of the University of the District of Columbia. *Downs v. Board of Trustees*, 112 WLR 493 (Super. Ct. 1984).

Power to sue and be sued. — This section establishes the Board of Trustees of the University of the District of Columbia as a "body corporate," having, inter alia, the power to sue and be sued. *Kelley v. Morris*, App. D.C., 400 A.2d 1045 (1979).

Cited in *Tschanneral v. District of Columbia Bd. of Educ.*, 594 F. Supp. 407 (D.D.C. 1984).

§ 31-1512. Board of Trustees Nominating Committee.

Repealed. _____, 1998, D.C. Law 12-(Act 12-256), § 401(i), 45 DCR 1172.

§ 31-1513. Suspension, removal, and termination of Trustees.

(a) Any Trustee shall be automatically suspended from serving as such member after he has been found guilty of a felony by a court of competent jurisdiction. Upon a final determination of his guilt or innocence, the term of such member shall automatically terminate or be reinstated.

(b) The Board of Trustees shall have the power to remove any member, after fair notice and an opportunity to be heard, at any time for adequate cause which relates to such members' character or efficiency as a Trustee.

(c) The tenure of the student member shall automatically terminate if the status of such member ceases to be that of a full-time student at the University. (1973 Ed., § 31-1713; Oct. 26, 1974, 88 Stat. 1425, Pub. L. 93-471, title II, § 203; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2921.)

Legislative history of Law 1-36. — See note to § 31-1511.

§ 31-1514. Reimbursement of Trustees.

Trustees shall serve without compensation except that each Trustee shall be entitled to reimbursement for actual and necessary expenses incurred while actually engaged in service as a Trustee, provided that these expenses are properly documented. In no case, however, shall a Trustee receive expense reimbursement that exceeds \$4,000 per annum. (1973 Ed., § 31-1714; Oct. 26, 1974, 88 Stat. 1426, Pub. L. 93-471, title II, § 204; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2292; Mar. 3, 1979, D.C. Law 2-139, § 3204(f), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Apr. 20, 1991, D.C. Law 8-259, § 2, 38 DCR 1449; July 13, 1991, D.C. Law 9-13, § 2, 38 DCR 3378.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 1-36. — See note to § 31-1511.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law 3-81 was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980 and May 20, 1980, respectively. Signed by the

Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-259. — Law 8-259 was introduced in Council and assigned Bill No. 8-734. The Bill was adopted on first and second readings on December 18, 1990, and February 5, 1991, respectively. Signed by the Mayor on February 15, 1991, it was assigned Act No. 8-344 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-13. — Law 9-13 was introduced in Council and assigned Bill No. 9-48, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was assigned Act No. 9-31 and transmitted to both Houses of Congress for its review.

§ 31-1515. Consolidation of existing public institutions of postsecondary education.

The Trustees shall by August 1, 1977, consolidate the existing public institutions of postsecondary education in the District of Columbia under a single management system to be called the University of the District of Columbia, with several programs, schools, colleges, institutes, campuses and other components that offer a comprehensive program of public postsecondary education. The institutions of public postsecondary education in the District of Columbia existing immediately prior to such consolidation shall be deemed abolished on the effective date of the consolidation. Thereafter, any reference in any law, rule, regulation, or other document of the United States or of the District of Columbia to such institutions shall be deemed to be a reference to the University of the District of Columbia. (1973 Ed., § 31-1715; Oct. 26, 1974, 88 Stat. 1426, Pub. L. 93-471, title II, § 205; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2922; Apr. 6, 1977, D.C. Law 1-99, § 2(a), 23 DCR 8729.)

Legislative history of Law 1-36. — See note to § 31-1511.

Cited in *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

Legislative history of Law 1-99. — See note to § 31-1511.

§ 31-1516. Duties of Trustees.

It shall be the duty of the Trustees to:

(1) Review the existing public institutions of postsecondary education with respect to:

- (A) Accreditation;
- (B) Present programs and functions;
- (C) Actual and potential capabilities; and
- (D) Educational policies and procedures;

(2)(A) Establish the University of the District of Columbia consisting of, but not limited to, 2 major components, liberal and fine arts and vocational and technical education;

(B) Prepare and, from time to time, revise a long-range plan for the development of the University which shall include the type and scope of programs offered and envisioned. Such plan shall also include the development, expansion, integration, coordination and efficient use of the facilities, physical plant, curricula, and standards of public postsecondary education. Such initial plan and any revisions thereof shall be made available to the public, the Council of the District of Columbia and the Mayor for a period of not less than 60 days prior to its implementation and the Trustees shall hold such hearings and public forums as may be necessary to receive public response and comment on such plans;

(C) Operate a public law school component, established under subchapter VI of this chapter, in a manner that shall:

(i) Maintain any accreditation necessary to qualify the graduates of the School of Law to take the bar examinations of the District of Columbia and of the several states;

(ii) Represent, to the maximum extent feasible, the legal needs of low-income persons, particularly those who reside in the District of Columbia, through the training of law students; and

(iii) Recruit and enroll, to the maximum extent feasible, students from racial, ethnic, and other population groups that in the past have been underrepresented among persons admitted to the bar of the District of Columbia and the several states;

(3) Establish or approve policies and procedures governing admissions, curricula, programs, graduation, the awarding of degrees, and general policy making for the components of the University;

(4) Prepare and submit to the Mayor, on a date fixed by the Mayor, an annual budget for each fiscal year. Such budget shall include a proposed financial operating plan for such fiscal year, and a capital and educational improvements plan for such fiscal year and the succeeding 4 fiscal years for the University. The Mayor and the Council shall, after review and consideration of the budget submitted by the Trustees, establish the maximum amount of funds for each of the major components of the University and the total University budget which will be allocated to the Trustees;

(5) Transfer during the fiscal year any appropriation balance available for one item of appropriation to another item of appropriation or to a new program designated by action of the Trustees; provided, that any such action under this paragraph shall be taken in accordance with the provisions of the reprogramming policy and laws of the District of Columbia;

(6) Repealed.

(7) Enter into negotiations and binding contracts in accordance with District contracting and procurement rules and regulations to perform organized research, training and demonstrations on a reimbursable basis for the United States and the government of the District of Columbia and other public and private agencies;

(8) Fix tuition, and fees in addition to tuition, to be paid by resident and nonresident students attending the University; provided, that such tuition and fees are adopted by the Trustees in accordance with the provisions of § 1-1506(a);

(9) Deposit all revenues and receipts of any nature whatsoever derived from tuition and fees received from students with the District of Columbia Treasurer under regulations established by the Mayor, which revenues shall be accounted for in the Municipal University Fund as a separate revenue source allocated to provide authority for such University purposes as the Board of Trustees may approve;

(10) Select, appoint, and fix the compensation for a Chief Executive Officer of the University and of such staff for the Board of Trustees as it deems necessary and approve the appointment and compensation of the academic and administrative heads of each of the components of the University and of such other officers as it deems necessary, including legal counsel, subject to the provisions of Chapter 6 of Title 1. The Chief Executive Officer shall serve at the pleasure of the Trustees;

(11) Submit recommendations to the Mayor and the Council of the District of Columbia from time to time relating to legislation affecting the administration and programs of the University;

(12) Develop and define, in conjunction with the faculty, a policy governing academic freedom for the University and establish mechanisms to ensure its protection and enforcement;

(13) Perform such duties and make such rules and regulations as may be necessary to carry out the purposes of this chapter;

(14) Seek to establish with the Board a Coordination Committee to determine areas of cooperation, coordination and assistance;

(15) Utilize the services and seek the counsel and advice of the District of Columbia Commission on Postsecondary Education in planning the development of a program for public postsecondary education in the District of Columbia; and

(16) Generally determine, control, supervise, manage, and govern all affairs of the University of the District of Columbia; provided, however, except as provided in section 301, that procurement and disposal of goods and services shall be carried out by the Office of Contracting and Procurement on behalf of the Trustees. Toward this end the Trustees are authorized to adopt such policies and regulations as it may deem wise. (1973 Ed., § 31-1716; Oct. 26, 1974, 88 Stat. 1427, Pub. L. 93-471, title II, § 206; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2923; Mar. 3, 1979, D.C. Law 2-139, § 3204(f), 25 DCR 5740; Aug. 22, 1980, D.C. Law 3-82, § 3(a), 27 DCR 2647; Feb. 9, 1984, D.C. Law 5-47, § 2, 30 DCR 5641; Feb. 24, 1987, D.C. Law 6-177, § 2(c), (d), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 301(c), 43 DCR 2978; Apr. 12, 1997, D.C. Law 11-259, § 314(b), 44 DCR 1423.)

Section references. — This section is referred to in §§ 1-637.1 and 31-1511.

Effect of amendments. — D.C. Law 11-152 made a stylistic change in the first sentence and deleted the last sentence in former (6) and (9).

D.C. Law 11-259 repealed (6); substituted “in accordance with District contracting and procurement rules and regulations” for “pursuant to the regulations adopted by the Trustees under paragraph (6) of this section” in (7); and added the proviso at the end of (16).

Emergency act amendments. — For temporary amendment of section, see § 301(c) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(c) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for the application of the act.

Legislative history of Law 1-36. — See note to § 31-1511.

Legislative history of Law 2-139. — See note to § 31-1514.

Legislative history of Law 3-82. — Law 3-82 was introduced in Council and assigned

Bill No. 3-3, which was referred to the Committee of the Whole. The Bill was adopted on first, amended first and second readings on April 22, 1980, May 6, 1980, and May 20, 1980, respectively. Signed by the Mayor on June 12, 1980, it was assigned Act No. 3-196 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-47. — Law 5-47 was introduced in Council and assigned Bill No. 5-218, which was referred to the Committee on Education. The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 21, 1983, it was assigned Act No. 5-73 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — See note to § 31-1541.

Legislative history of Law 11-152. — See note to § 31-1502.

Legislative history of Law 11-259. — See note to § 31-1511.

Editor's notes. — This section was also amended by Section 301(c) of D.C. Law 11-152, effective August 1, 1996. The amendment by D.C. Law 11-152 deleted the last sentence in former (6).

Cited in *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

§ 31-1517. Transfer of functions, personnel, property, assets, and liabilities.

The Board of Higher Education and the Vocational Board shall be abolished on the day that the Board of Trustees convenes its 1st meeting. Except as provided by this chapter all functions, powers, and duties of the Board of Higher Education and the Vocational Board under Chapter 14 of this title shall be vested in and exercised by the Trustees. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds and assets and liabilities of the Board of Higher Education and Vocational Board are authorized to be transferred to the Trustees, except the functions of licensing institutions to confer degrees as authorized by § 29-815. All rules, orders, obligations, determinations and any other understandings of the Board of Higher Education and the Board of Vocational Education shall remain in effect until such time as they may be lawfully amended, modified or repealed by the Trustees. (1973 Ed., § 31-1718; Oct. 26, 1974, 88 Stat. 1428, Pub. L. 93-471, title II, § 208; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2929.)

Cross references. — As to transfer of functions from Office of Youth Opportunity Services to School of Continuing Education, Federal City College, University of the District of Columbia, see § 1-2603.

Legislative history of Law 1-36. — See note to § 31-1511.

§ 31-1518. Establishment as land-grant university.

(a) In the administration of: (1) the Act of August 30, 1890 (7 U.S.C. §§ 321 to 326, and 328) (known as the Second Morrill Act); (2) the 10th paragraph under the heading "Emergency Appropriations" in the Act of March 4, 1907 (7 U.S.C. § 322) (known as the Nelson Amendment); (3) § 22 of the Act of June 29, 1935 (7 U.S.C. § 329) (known as the Bankhead-Jones Act); (4) the Act of March 4, 1940 (7 U.S.C. § 331); and (5) the Agricultural Marketing Act of 1946 (7 U.S.C. §§ 1621 to 1627); the University shall be considered to be a university established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308) (known as the First Morrill Act); and the term "state" as used in the laws and provisions of law listed in clauses (1), (2), (3), (4) and (5) of this subsection shall include the District of Columbia.

(b) In the administration of the Act of May 8, 1914 (7 U.S.C. §§ 341 to 346, and 347a to 349) (known as the Smith-Lever Act):

(1) The University shall be considered to be a university established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308); and

(2) The term "state" as used in such Act of May 8, 1914, shall include the District of Columbia, except that the District of Columbia shall not be eligible to receive any sums appropriated under § 3 of such act.

(c) In lieu of an authorization of appropriations for the District of Columbia under § 3 of such Act of May 8, 1914, there is authorized to be appropriated such sums as may be necessary to provide cooperative agricultural extension work in the District of Columbia under such Act. Such sums may be used to pay no more than one half of the total cost of providing such extension work. Any reference in such Act (other than § 3 thereof) to funds appropriated under such Act shall in the case of the District of Columbia be considered a reference to funds appropriated under this subsection.

(d) Four per centum of the sums appropriated under subsection (c) of this section for each fiscal year shall be allotted to the Federal Extension Service of the Department of Agriculture for administrative, technical, and other services provided by the Service in carrying out the purposes of this section. (1973 Ed., § 31-1719; Oct. 26, 1974, 88 Stat. 1428, Pub. L. 93-471, title II, § 209(a)-(d); Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911.)

Section references. — This section is referred to in § 31-1519.

Legislative history of Law 1-36. — See note to § 31-1511.

References in text. — “Section 3 of such Act,” referred to in subsection (b)(2) and in the

first sentence of (c) of this section, is codified at 7 U.S.C. § 343.

Investment Advisory Committee for Land Grants Funds established. — See Mayor’s Order 83-129, May 17, 1983.

§ 31-1519. State consent.

The enactment of this chapter shall, as respects the District of Columbia, be deemed to satisfy any requirement of state consent contained in any of the laws or provisions of law referred to in § 31-1518. (1973 Ed., § 31-1720; Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title II, § 210; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911.)

Legislative history of Law 1-36. — See note to § 31-1511.

§ 31-1520. Transfer of powers of Board of Governors.

(a) All functions, powers, and duties of the Board of Governors of the District of Columbia School of Law established by § 31-1543 shall be vested in and exercised by the Trustees. The District of Columbia School of Law shall be merged with and become a component of the University of the District of Columbia, as a single independent agency of the District of Columbia under the authority and jurisdiction of the Trustees.

(b) All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds and assets and liabilities of the Board of Governors are transferred to the Trustees. All rules, orders, obligations, determinations, and any other understandings of the Board of Governors shall remain in effect until such time as they may be lawfully amended, modified, or repealed by the Trustees. Thereafter, any reference in any law, rule, regulation, or other document of the United States or the District of Columbia to the Board of Governors shall be deemed to be a reference to the Trustees, and any reference in any law, rule,

regulation, or other document of the United States or the District of Columbia to the District of Columbia School of Law shall be deemed to be a reference to the University of the District of Columbia School of Law.

(c) The Trustees shall be bound by the terms of the Merger Agreement between the University of the District of Columbia and the District of Columbia School of Law, signed November 6, 1995. (Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title 11, § 211, as added, Aug. 1, 1996, D.C. Law 11-152, § 301(d), 43 DCR 2978.)

Effect of amendments. — D.C. Law 11-152 added this section.

Emergency act amendments. — For temporary addition of section, see § 301(d) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, Apr. 26, 1996, 43 DCR 2412), and § 201(d) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for the application of the act.

Legislative history of Law 11-152. — See note to § 31-1502.

References in text. — Section 31-1543, referred to twice in (12), was repealed by D.C. Law 11-152, 43 DCR 2978.

Law School buildings. — For provisions directing the District of Columbia School of Law to submit any lease or building purchase agreement to the Council for review, see § 702 of D.C. Law 10-128.

Subchapter III. Authorizations.

§ 31-1521. Appropriations; purchase and sale of books.

(a) There are authorized to be appropriated out of any money in the Treasury to the credit of the District of Columbia such sums as may be necessary for carrying out the purposes of this chapter.

(b) The Trustees are authorized to purchase and sell books at such prices as they determine necessary to approximate the cost of the sale of such books, excluding personnel and overhead costs. All receipts from the sale of such books shall be deposited with the D.C. Treasurer and accounted for within the Municipal University Fund as a separate revenue source allocable to provide authority for the purchase of books as the Board of Trustees may approve. Any unexpended balance at the end of fiscal year 1981 or each succeeding fiscal year thereafter shall be reserved as a restricted fund balance and used to provide authority to expend for subsequent years, for the purchase of books, subject to the direction of the Board of Trustees. Such funds which are available from the general revenues of the District of Columbia and appropriated in fiscal year 1981 for the purpose of the procurement of books by the Trustees and receipts from the sale of such books shall also be deposited with the D.C. Treasurer and accounted for in an account within the Municipal University Fund; provided, that the base of the budget of the University shall be reduced in fiscal year 1982 by an amount equal to the funds appropriated in fiscal year 1981 for the purpose of procurement of such books and receipts from the sale of such books. (1973 Ed., § 31-1721; Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title III, § 301; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2930; Sept. 23, 1978, D.C. Law 2-111, § 3, 25 DCR 1462; Aug. 22, 1980, D.C. Law 3-82, § 3(b), 27 DCR 2647.)

Legislative history of Law 1-36. — See note to § 31-1511.

Legislative history of Law 2-111. — Law 2-111 was introduced in Council and assigned Bill No. 2-334, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 13, 1978 and

June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-82. — See note to § 31-1516.

Subchapter IV. Miscellaneous.

§ 31-1531. Meetings of Trustees.

Meetings may be called by the Chairperson or a majority of the members of the Trustees. No official action may be taken by the Trustees except at a meeting of the Trustees at which a quorum is present. A total of 8 of the voting members of the Board of Trustees shall constitute a quorum for the transaction of business, except a lesser number may hold hearings. Each meeting of the Trustees shall be open to the public and held in the District of Columbia with appropriate notice of each such meeting given to the general public, except a majority of the Trustees may elect to go into executive session to take action on personnel matters. The Trustees shall meet at stated times established by the Board of Trustees, but not less frequently than 4 times a year. (1973 Ed., § 31-1731; Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title IV, § 401; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931; Mar. 3, 1979, D.C. Law 2-132, § 2, 25 DCR 3489.)

Legislative history of Law 1-36. — See note to § 31-1511.

Legislative history of Law 2-132. — Law 2-132 was introduced in Council and assigned Bill No. 2-258, which was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and

second readings on July 25, 1978, and September 19, 1978, respectively. Signed by the Mayor on October 13, 1978, it was assigned Act No. 2-279 and transmitted to both Houses of Congress for its review.

Cited in *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

§ 31-1532. Advisory committees.

The Trustees shall appoint such advisory committees as are necessary to advise on educational policy. Such advisory committees may consist of members of the Trustees, students, faculty members, parents, and governmental, educational, business, industrial, labor, and community representatives. (1973 Ed., § 31-1732; Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title IV, § 402; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931.)

Legislative history of Law 1-36. — See note to § 31-1511.

§ 31-1533. Gifts and contributions.

(a) The Trustees may accept services, moneys, gifts, endowments, donations, and bequests. The Trustees may in their discretion retain or not retain such in the form in which they are made.

(b) The Trustees shall establish in 1 or more financial institutions in the District of Columbia the District of Columbia Postsecondary Education Fund. There shall be deposited in such fund all gifts and contributions in whatever form, funds in receipt of services rendered, other than tuition, and all moneys not included in the annual operating and capital and educational improvements funds appropriated by Congress. Moneys deposited therein shall be available for investment and shall be distributed in such amounts and in such manner as the Trustees may determine. The Trustees are authorized to administer such fund in whatever manner the Trustees may deem wise and prudent, provided that such administration is lawful and does not impose any fiscal burden on the District of Columbia.

(b-1) The Trustees shall establish in one or more financial institutions in the District of Columbia a District of Columbia School of Law Fund ("Fund"). There shall be deposited in the Fund all gifts and contributions in whatever form, funds received for services rendered by the School of Law, other than tuition, and all monies dedicated to the support of the School of Law not included in the annual operating and capital improvement funds appropriated for the University by Congress. Subject to the applicable laws relating to the appropriation of District funds, the Trustees are authorized to administer the Fund in whatever manner the Trustees may deem wise and prudent, provided that the administration is lawful, in accordance with the fiduciary responsibilities of the Trustees, and does not impose any financial burden on the District of Columbia.

(c) It is not the intent that any income derived as a result of such funds shall take the place of any District or federal appropriations or any part thereof but that it shall supplement such appropriations to the end that the University may improve and increase its functions, may enlarge its areas of service and may become more useful to a greater number of people. Nothing in this section shall be construed to prevent the Trustees from receiving gifts, donations, and bequests from any source and from using the same for such lawful purposes as the donor or donors designate. (1973 Ed., § 31-1733; Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title IV, § 403; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2932; Aug. 1, 1996, D.C. Law 11-152, § 301(e), 43 DCR 2978.)

Section references. — This section is referred to in § 31-1511.

Effect of amendments. — D.C. Law 11-152 inserted (b-1); and substituted "funds" for "fund" in the first sentence in (c).

Emergency act amendments. — For temporary amendment of section, see § 301(e) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(e) of the Fiscal Year 1996 Budget Support Congressional Re-

view Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for the application of the act.

Legislative history of Law 1-36. — See note to § 31-1511.

Legislative history of Law 11-152. — See note to § 31-1502.

Cited in *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

§ 31-1534. Annual report.

The Trustees shall make an annual report to the general public, Mayor, Council, and the Congress on December 31st of each year on the operation of

programs and the expenditure of all funds for public postsecondary education in the District of Columbia. Such annual report shall include, but not be limited to, the source, amount, distribution and expenditure of all funds whatever the source; and general student enrollment data, including, but not limited to, race, sex, age, major area of study, previous and current residency and upon graduation or termination of study, employment placement data (consistent with existing statutes and Department of Education regulations). (1973 Ed., § 31-1734; Oct. 26, 1974, 88 Stat. 1430, Pub. L. 93-471, title IV, § 404; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2933.)

Legislative history of Law 1-36. — See note to § 31-1511.

Change in government. — “Department of Education,” referred to in the last sentence of this section, was substituted for “Department

of Health, Education and Welfare,” pursuant to § 301 of the Act of October 17, 1979, 93 Stat. 677, Pub. L. 96-88.

Cited in *Krieger v. Trane Co.*, 765 F. Supp. 756 (D.D.C. 1991).

§ 31-1535. Transfer of appropriation balance; power to contract; Material Fund.

(a) The Board of Education of the District of Columbia is authorized to transfer during the fiscal year any appropriation balance available for one item of appropriation to another item of appropriation or to a new program designated by action of the Board; provided, that any such action under this subsection shall be taken in accordance with the reprogramming policy and laws of the District of Columbia.

(b) Except as provided in § 1-336, the Office of Contracting and Procurement shall contract on behalf of the Board of Education for procurement of goods or services necessary for the performance of Board of Education functions.

(c) There is established, in the General Fund, an account entitled the Material Fund which shall be limited to public school use. The Board of Education is authorized to transfer its authority from the Material Fund to an internal service fund, which transferred authority if not obligated by the end of the first quarter of fiscal year 1981, or each succeeding fiscal year thereafter, shall expire. (1973 Ed., § 31-1735; Oct. 26, 1974, 88 Stat. 1430, Pub. L. 93-471, title IV, § 405; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2934; Mar. 3, 1979, D.C. Law 2-139, § 3204(b), 25 DCR 5740; Aug. 22, 1980, D.C. Law 3-82, §§ 3(c), 27 DCR 2647; May 23, 1990, D.C. Law 8-131, § 2, 37 DCR 2211; June 22, 1990, D.C. Law 8-143, § 2, 37 DCR 2972; Apr. 12, 1997, D.C. Law 11-259, § 314(c), 44 DCR.)

Section references. — This section is referred to in § 1-637.1.

Effect of amendments. — D.C. Law 11-259 rewrote (b).

Legislative history of Law 1-36. — See note to § 31-1511.

Legislative history of Law 2-139. — See note to § 31-1514.

Legislative history of Law 3-82. — See note to § 31-1516.

Legislative history of Law 8-131. — Law

8-131 was introduced in Council and assigned Bill No. 8-529. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Signed by the Mayor on March 27, 1990, it was assigned Act No. 8-183 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-143. — Law 8-143 was introduced in Council and assigned Bill No. 8-504, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 26, 1990, it was assigned Act No. 8-199 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-258. — See note to § 31-1511.

§ 31-1536. Authority of Council.

Notwithstanding any other provision of law, or any rule of law, nothing in this chapter shall be construed as limiting the authority of the Council to enact any act or resolution, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this chapter. (1973 Ed., § 31-1736; Oct. 26, 1974, 88 Stat. 1430, Pub. L. 93-471, title IV, § 406; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2934.)

Emergency act amendments. — For temporary addition of section, see § 301(f) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and

Legislative history of Law 1-36. — See note to § 31-1511.

References in text. — “The District of Columbia Self-Government and Governmental Reorganization Act,” referred to near the end of

the section, is the Act of December 24, 1973, 87 Stat. 774, Pub. L. 93-198.

Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786 provided that any reference in law or regulation to the “District of Columbia Self-Government and Governmental Reorganization Act” shall be deemed to be a reference to the “District of Columbia Home Rule Act,” which is set out in Volume 1.

§ 31-1537. Rules for preferential tuition rates for District residents.

Within 90 days of August 1, 1996, the Trustees will consider and adopt uniform rules applicable to students of the University, including the School of Law, setting forth the requirements for preferential tuition rates for bona fide residents of the District of Columbia and requirements for recognition of changes in residency status. (Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title IV, § 407, as added Aug. 1, 1996, D.C. Law 11-152, § 301(f), 43 DCR 2978.)

Effect of amendments. — D.C. Law 11-152 added this section.

Emergency act amendments. — For temporary addition of section, see § 301(f) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(f) of the Fiscal Year 1996

Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for the application of the act.

Legislative history of Law 11-152. — See note to § 31-1502.

Subchapter V. Establishment of Public School of Law.

§ 31-1541. Purposes.

In enacting this subchapter, the Council of the District of Columbia supports the following statutory purposes:

(1) To authorize the establishment of a public school of law for the District of Columbia; and

(2) To ensure that the programs and clinical operations of the School of Law of Antioch University, in operation as of February 24, 1987, are adopted initially as the programs and clinical operations of the public School of Law for the District of Columbia. (Oct. 26, 1974, Pub. L. 93-471, title V, § 501, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 2(a), 36 DCR 8117.)

Effect of amendments. — D.C. Law 8-74, in (2), deleted “curriculum” following “ensure that the”, and deleted “personnel, students” following “programs” twice.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Public School of Law Amendment Emergency Act of 1990 (D.C. Act 8-151, January 26, 1990, 37 DCR 1060).

Legislative history of Law 6-177. — Law 6-177, “Authorization for the Establishment of a Public School of Law for the District of Columbia Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-472, which was referred to the Committee on Education. The Bill was adopted on first and second

readings on September 23, 1986, and October 7, 1986, respectively. Approved without the signature of the Mayor on October 31, 1986, it was assigned Act No. 6-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-74. — Law 8-74 was introduced in Council and assigned Bill No. 8-356, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on October 24, 1989, and November 7, 1989, respectively. Signed by the Mayor on November 16, 1989, it was assigned Act No. 8-114 and transmitted to both Houses of Congress for its review.

§§ 31-1542 to 31-1548. Definitions; establishment of Board of Governors and School of Law; Board of Governors Nominating Committee; suspension, removal, and termination of Governors; duties and limitations of the Board of Governors; retirement; employment rights.

Repealed. Aug. 1, 1996, D.C. Law 11-152, § 301(g)-(m), 43 DCR 2978.

Emergency act amendments. — For temporary repeal of §§ 31-1542 through 31-1548, see § 301(g) through (m) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(g)-(m) of the Fiscal Year 1996 Budget Support Congressional Review Emergency

Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for application of the act as to §§ 31-1542 through 31-1548.

Legislative history of Law 11-152. — See note to § 31-1502.

§ 31-1549. Review of records.

The District of Columbia Auditor shall, upon request, be provided access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to, or in use by, the School of Law, in accordance with the provisions of § 47-117. (Oct. 26, 1974, Pub. L. 93-471, title V, § 509, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241.)

Legislative history of Law 6-177. — See note to § 31-1541.

§ 31-1550. Preferential tuition for District of Columbia residents.

(a) The Board of Trustees shall, in accordance with § 31-1546(c)(7), fix tuition to allow bona fide residents of the District of Columbia to attend the School of Law on a preferential tuition basis.

(b) An applicant for preferential tuition shall make a showing of the applicant's bona fide residence in the District of Columbia. Any applicant for the preferential tuition established under subsection (a) of this section shall be presumed to be a bona fide resident of the District of Columbia if the applicant has been, for 2 continuous years prior to the date of the applicant's enrollment in the School of Law:

(1) Domiciled in the District of Columbia and paid District of Columbia income taxes; or

(2) Enrolled in a college or university located outside the District of Columbia and been claimed as a dependent on District of Columbia resident tax returns filed by a parent or spouse of the applicant.

(c) Any applicant for the preferential tuition established under subsection (a) of this section who is not presumed to be a bona fide resident of the District of Columbia shall be required to establish by a preponderance of the evidence to the Board of Trustees or its designee that the applicant:

(1) Was a bona fide resident of the District of Columbia for a reasonable duration of time prior to the applicant's request for preferential tuition; and

(2) Remains a bona fide resident of the District of Columbia.

(d) In determining whether an applicant for preferential tuition under subsection (c) of this section is in fact a bona fide resident of the District of Columbia, the following factors shall be taken into consideration:

(1) Whether the applicant has maintained a year-round home in the District of Columbia, as evidenced by lease or mortgage agreements;

(2) Where the applicant's driver's license, if any, was issued;

(3) Where the applicant's motor vehicle, if any, is registered;

(4) Where the applicant is registered to vote;

(5) What address the applicant has used over the past several years for purposes of filing federal income tax returns, if any;

(6) Whether the applicant is a graduate of a public or private District of Columbia high school; and

(7) Any other factor deemed appropriate by the Board of Trustees.

(e) Any applicant denied preferential tuition shall be permitted to appeal the denial by whatever procedures and to whatever officer of the School of Law as the Board of Trustees shall establish for final determination. (Oct. 26, 1974, Pub. L. 93-471, title V, § 510, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 2(g), 36 DCR 8117; Aug. 1, 1996, D.C. Law 11-152, § 301(n), 43 DCR 2978.)

Effect of amendments. — D.C. Law 8-74 added (d)(7).
D.C. Law 11-152 substituted "Board of Trust-

ees" for "Board of Governors" throughout the section.

Emergency act amendments. — For tem-

porary repeal of section, see § 301(n) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412).

Section 303 of D.C. Act 11-264 provides for the application of § 301(n) of the act.

For temporary amendment of section, see § 201(n) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for application of the act.

Legislative history of Law 6-177. — See note to § 31-1541.

Legislative history of Law 8-74. — See note to § 31-1541.

Legislative history of Law 11-152. — See note to § 31-1502.

References in text. — Section 31-1546, referred to in subsection (a), was repealed August 1, 1996, by D.C. Law 11-152.

§ 31-1551. Mayoral stipends.

The Mayor shall make available tuition stipends for students of the School of Law who are bona fide residents of the District of Columbia and who agree to employment by the District of Columbia government, or by any public service organization or institution designated by the Mayor, for a period of time immediately following the students' graduation from the School of Law. The length of service required shall be established by the terms of the stipends. Any stipend recipient who fails to perform the post-graduation work requirement shall be held liable to the District of Columbia for 3 times the amount of stipend funds provided to the recipient. (Oct. 26, 1974, Pub. L. 93-471, title V, § 511, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241.)

Legislative history of Law 6-177. — See note to § 31-1541.

§ 31-1552. Full faith and credit of the District of Columbia not pledged.

The full faith and credit of the District of Columbia is not pledged for the payment of any principal of or interest on any obligation maintained or entered into by the Antioch School of Law, directly or indirectly, in whole or in part. The District of Columbia is not responsible or liable for payment of any principal of or interest on any obligation entered into by the Antioch School of Law, directly or indirectly, in whole or part. (Oct. 26, 1974, Pub. L. 93-471, title V, § 512, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241.)

Legislative history of Law 6-177. — See note to § 31-1541.

§ 31-1553. Merger.

Repealed. Aug. 1, 1996, D.C. Law 11-152, § 301(o), 43 DCR 2978.

Emergency act amendments. — For temporary repeal of section, see § 301(o) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(o) of the Fiscal Year 1996 Budget Support Congressional Review

Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for application of the act.

Legislative history of Law 11-152. — See note to § 31-1502.

Editor's notes. — This section was also amended by § 34 of D.C. Law 11-255. The amendment by section 34 of D.C. Law 11-255

validated a previously made stylistic change in (b)(6).

Subchapter VI. Establishment of District of Columbia School of Law Within the University of the District of Columbia.

§§ 31-1561, 31-1562. Establishment; powers of Trustees; Board of Governors.

Repealed. Mar. 15, 1990, D.C. Law 8-74, § 3(a), 36 DCR 8117.

Legislative history of Law 8-74. — See note to § 31-1541.

Subchapter VII. Provision of Tuition Grants.

§ 31-1571. Definitions.

For the purposes of this subchapter, the term:

(1) "Eligible caretaker relative" means an individual as defined in § 3-205.15(2)(B), who has primary responsibility for the care of a dependent child.

(2) "Eligible legal guardian" means any individual:

(A) Appointed as a testamentary or appointive guardian pursuant to Chapter 1 of Title 21; and

(B) Necessary for the maintenance of a household as provided in § 3-205.15(2)(D).

(3) "Eligible parent" means a child's natural or adoptive parent in a family eligible for the Aid to Families with Dependent Children ("AFDC") category of public assistance as defined in § 3-201.1(1).

(4) "Tuition grant" means a sum equal to the basic instructional charge for a full- or part-time program at the University and includes all required fees.

(5) "State" means any state of the United States, the District of Columbia, or any territory or possession of the United States. (Oct. 26, 1974, Pub. L. 93-471, title VII, § 701, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Legislative history of Law 7-74. — Law 7-74, "Tuition Grant for Parents, Caretaker Relatives, and Legal Guardians Eligible for AFDC Benefits Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-58, which was referred to the Committee on

Education and Libraries. The Bill was adopted on first and second readings on October 27, 1987, and November 10, 1987, respectively. Signed by the Mayor on November 24, 1987, it was assigned Act No. 7-108 and transmitted to both Houses of Congress for its review.

§ 31-1572. Criteria for tuition grant eligibility.

Subject to the limitations provided in §§ 31-1573 and 31-1575, the University shall admit an eligible parent, a caretaker relative, or a legal guardian, who shall have been certified as eligible by the District of Columbia Department of Human Services, to any scheduled course and shall provide a tuition grant that shall be used exclusively to offset against the charge for tuition and

required fees for the eligible student taking one or more courses, whether or not taken for credit toward a degree, when the course or courses are being given, when space is available, and when the conditions for enrollment in the course are met. (Oct. 26, 1974, Pub. L. 93-471, title VII, § 702, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Section references. — This section is referred to in § 31-1573.

Legislative history of Law 7-74. — See note to § 31-1571.

Establishment of District of Columbia Advisory Committee on Education. — See Mayor's Order 89-256, November 7, 1989.

§ 31-1573. Conditions of enrollment.

All pertinent University rules and regulations, including, but not limited to, those relating to admission standards, shall apply to applicants for admission and to students already enrolled who are eligible for the tuition grant program outlined in § 31-1572. (Oct. 26, 1974, Pub. L. 93-471, title VII, § 703, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Section references. — This section is referred to in § 31-1572.

Legislative history of Law 7-74. — See note to § 31-1571.

§ 31-1574. Report on grant program participation.

At the termination of each semester, the Trustees of the University shall furnish to the Council of the District of Columbia a statement of:

(1) The number of persons who, during that semester, received tuition grants and participated in one or more courses pursuant to the provisions of this subchapter;

(2) The total number of course enrollments attributable to these persons;

(3) The number of individuals included in the response to paragraph (1) of this section who successfully completed each course, who dropped out, or who otherwise did not complete a course in which the individual had enrolled; and

(4) The total amount of funds granted for the semester pursuant to this program to offset charges for tuition and required fees. (Oct. 26, 1974, Pub. L. 93-471, title VII, § 704, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Legislative history of Law 7-74. — See note to § 31-1571.

§ 31-1575. Limitation on grants.

No tuition grant pursuant to this subchapter shall be offered or approved for any student who has previously been the recipient of a tuition grant but has failed to remain in good academic standing by reason of neglect of the student's academic work. (Oct. 26, 1974, Pub. L. 93-471, title VII, § 705, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Section references. — This section is referred to in § 31-1572.

Legislative history of Law 7-74. — See note to § 31-1571.

§ 31-1576. Additional educational opportunities.

This subchapter shall not be construed to prohibit the University from offering eligible parents, caretaker relatives, or legal guardians eligible pursuant to this subchapter additional financial assistance, additional educational opportunities free of charge or at reduced charge, or other assistance supplemental to or in addition to the minimum requirements specified by this subchapter. (Oct. 26, 1974, Pub. L. 93-471, title VII, § 706, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Legislative history of Law 7-74. — See note to § 31-1571.

§ 31-1577. Budget account.

The Trustees shall set aside funds in an appropriate budget account or accounts to provide for the grants authorized in this subchapter. In providing funds for a tuition grant pursuant to this subchapter, the Trustees shall first ensure that the University or the student has applied for any federal educational grant funds available to the University or to the student for this purpose, and the Trustees shall use District of Columbia appropriated funds or other University funds only for that part of the tuition grant that exceeds the amount of federal educational grant funds available. In the case of a student who meets all eligibility requirements for direct federal educational grant funds and has made timely application for these grant funds but the funds have not been received by either the University or the student, the University shall credit the student's account in an amount not less than the federal educational grant funds for which the student is eligible and not more than the student's tuition and fees. Upon receipt of federal grant funds by the University, the University shall apply the funds received to the student's account; or, upon receipt of federal grant funds by the student, the student shall immediately repay to the University the amount credited by the University. (Oct. 26, 1974, Pub. L. 93-471, title VII, § 707, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Legislative history of Law 7-74. — See note to § 31-1571.

CHAPTER 16. EDUCATIONAL LICENSURE COMMISSION.

Sec.	Sec.
31-1601. Purpose.	31-1607. Same — Functions.
31-1602. Definitions.	31-1608. Supplemental funding.
31-1603. Educational Licensure Commission — Established.	31-1609. Postsecondary educational institution; requirements.
31-1604. Same — Composition; terms; vacancies; meetings; compensation.	31-1610. Exempt institutions.
31-1605. Same — Transfer of positions; personnel; establishment of panels.	31-1611. Bond or surety requirement; Mayor to issue rules.
31-1606. Same — Regulations; review of licensed institutions; validity of current licenses.	31-1612. Violations; penalties.

§ 31-1601. Purpose.

The purpose of this chapter is to provide for the protection, education, and welfare of the citizens of the District of Columbia and its students, by:

(1) Establishing minimum standards concerning the quality of postsecondary education, ethical and business practices, health and safety, and fiscal responsibility, to protect against substandard, transient, unethical, deceptive, or fraudulent postsecondary educational institutions and practices;

(2) Prohibiting the granting of false or misleading postsecondary educational credentials;

(3) Prohibiting misleading literature, advertising, solicitation, or representation by postsecondary educational institutions or their agents;

(4) Providing for the preservation of essential academic records;

(5) Providing for a commission to advise the Mayor and Council of the District of Columbia as to the postsecondary educational needs of the District of Columbia; and

(6) Providing for a commission to serve as the state approving agency for veterans benefits. (1973 Ed., § 31-2001; Apr. 6, 1977, D.C. Law 1-104, title I, § 101, 23 DCR 8734; Mar. 16, 1989, D.C. Law 7-217, § 2(a), 36 DCR 523.)

Legislative history of Law 1-104. — Law 1-104 was introduced in Council and assigned Bill No. 1-293, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on September 15, 1976, and October 12, 1976, respectively. Enacted without signature by the Mayor on November 18, 1976, it was assigned Act No. 1-177 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-217. — See note to § 31-1609.

Appropriations authorized. — Public Law 102-111, 105 Stat. 563, the District of Columbia Appropriations Act, 1992, provided \$477,000 for the Education Licensure Commission.

Establishment of District of Columbia Advisory Committee on Education. — See Mayor's Order 89-256, November 7, 1989.

Commission did not err in denying license to confer degrees because the Florida university seeking a license to offer doctorate degree courses in the District of Columbia had no library of its own in D.C. and did not meet the District's requirements for adequate full-time faculty in D.C. *Nova Univ. v. Educational Inst. Licensure Comm'n*, App. D.C., 483 A.2d 1172 (1984), cert. denied, 470 U.S. 1054, 105 S. Ct. 1759, 84 L. Ed. 2d 822 (1985).

Cited in *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987); *Goode v. Antioch Univ.*, App. D.C., 544 A.2d 704 (1988).

§ 31-1602. Definitions.

For the purposes of this chapter:

(1) "Agent" means any person owning any interest in, employed by, or representing for remuneration, an educational institution, whether such institution is located within or outside the District, and who solicits or offers to enroll in the District students or enrollees for such institution, or who holds himself or herself out to residents of the District of Columbia as representing an educational institution for any such purpose.

(1a) "Accredited" means approved by an accrediting association recognized by the United States Department of Education.

(2) "District" means the District of Columbia.

(3) "Person" includes, but is not limited to, any individual, group of individuals, firm, partnership, corporation, association, company, society, trust, or any other entity whatsoever.

(4) "Educational institution" means:

(A) Any entity or person organized or chartered in the District;

(B) Any branch, extension or facility of an entity operating in the District, but organized or chartered outside of the District, that furnishes or offers to furnish in the District instruction or educational services leading toward a postsecondary degree, diploma, or certificate; or

(C) An entity that is organized or chartered and that operates outside of the District of Columbia, but through agents offers instruction or educational services to residents of the District.

(4a) "Certificate" or "diploma" means a document, designation, mark, appellation, series of letters or words, academic or honorary title, or other symbol that signifies, purports or is generally taken to signify satisfactory completion of the requirements of an academic, educational, vocational or professional program of study at the postsecondary level, but does not include completion of a program for a degree.

(5) "Degree" means a document, designation, mark, appellation, series of letters or words, academic or honorary titles, or other symbol that signifies, purports or is generally taken to signify satisfactory completion of the requirements of an academic, educational, or professional program of study for the associate, bachelor, master or doctor level of college or university education.

(6) "To grant or to confer" includes awarding, selling, conferring, bestowing, or giving.

(7) "Education", "educational service", or a like term means a class, course, or program of instruction or study at the postsecondary level in whatever form, manner, or medium provided, whether by personal attendance or correspondence.

(8) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(9) "Chairman of the Council" means Chairman of the Council of the District of Columbia.

(10) “Commission” means Educational Licensure Commission.

(11) “To operate” or “operating” when applied to an educational institution means to establish, keep, or maintain any facility or location in the District, or to establish, keep, or maintain any facility or location organized or chartered in the District wherefrom or through which education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act.

(12) “License” or “to license” means the granting of approval to operate by the Commission to any educational institution covered under this chapter. Such approval shall be contingent upon said educational institution’s compliance with all rules, regulations and criteria promulgated by the Commission, as well as compliance with all other applicable D.C. laws and regulations.

(12a) “Nonprofit” means an organization or institution that is exempt from federal income tax under the provisions of 26 U.S.C. § 501(c)(3) and that meets the requirements of Chapter 5 of Title 29.

(12b) “Postsecondary” means the level of education beyond high school.

(13) “Proprietary school” means any privately-owned educational institution operated for a profit. (1973 Ed., § 31-2002; Apr. 6, 1977, D.C. Law 1-104, title II, § 201, 23 DCR 8734; Mar. 16, 1989, D.C. Law 7-217, § 2(b), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(a), (b), 38 DCR 333.)

Legislative history of Law 1-104. — See note to § 31-1601.

Legislative history of Law 7-217. — See note to § 31-1609.

Legislative history of Law 8-239. — Law 8-239 was introduced in Council and assigned Bill No. 8-584, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990,

respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-322 and transmitted to both Houses of Congress for its review.

Licensing of proprietary schools. — For amendment of proprietary school regulation related to the licensing of proprietary schools, see § 2 of the Proprietary School Regulations Amendment Act of 1982 (D.C. Law 4-134, 29 DCR 2748).

§ 31-1603. Educational Licensure Commission — Established.

There is established for the District of Columbia an Educational Licensure Commission (“Commission”) which shall license postsecondary educational institutions subject to this chapter and their agents, ensure authenticity and legitimacy of the educational institutions, serve as the state approving agency for veterans educational benefits, provide standards and criteria, and administer rules and regulations, including rules of procedure for the Commission to ensure adequate public notice of each meeting of the Commission. (1973 Ed., § 31-2003; Apr. 6, 1977, D.C. Law 1-104, § 3, 23 DCR 8734; Mar. 16, 1989, D.C. Law 7-217, § 2(c), 36 DCR 523.)

Cross references. — As to licensing of institutions of learning to confer degrees, see §§ 29-815 to 29-818.

Section references. — This section is referred to in § 1-1462.

Legislative history of Law 1-104. — See note to § 31-1601.

Legislative history of Law 7-217. — See note to § 31-1609.

Realignment of functions within the De-

partment of Consumer and Regulatory Affairs. — See Mayor's Order 96-15, February 8, 1996 (43 DCR 1112).

Cited in *Goode v. Antioch Univ.*, App. D.C., 544 A.2d 704 (1988).

§ 31-1604. Same — Composition; terms; vacancies; meetings; compensation.

(a) The Commission shall consist of 5 members who shall be appointed by the Mayor.

(b) Each member of the Commission shall be a bona fide resident of the District of Columbia and shall serve for a term of 3 years, except that of the members first appointed to the Commission, 3 members shall be appointed to serve for a term of 2 years and 2 members shall be appointed to serve for a term of 3 years, to be determined by lot. Members may not be appointed to serve for more than 2 consecutive terms. Any person appointed to fill a vacancy on the Commission shall be appointed to serve the remainder of the term in the same manner as the original selection. Persons appointed to fill the remainder of a term, where the remainder is less than one-half of the original term, may be reappointed to 2 full terms.

(c) Any member of the Commission who is or has been, within 12 months of appointment, an officer, employee, student, trustee, or member of the governing board of an educational institution operating in the District of Columbia that is subject to licensure by the Commission or has a financial interest in an educational institution subject to licensure shall not participate in any matter before the Commission concerning the institution.

(d) The Commission shall choose annually from among its members a Chairperson and such other officers as it deems necessary. All meetings of the Commission shall be called by the Chairperson or a majority of the members, except the 1st meeting of the Commission shall be called by the Mayor.

(e) Three members shall constitute a quorum of the Commission and no official action of the Commission shall be taken except in an open meeting of the Commission with a quorum present.

(f) Members of the Commission shall each be entitled to compensation pursuant to the provisions of § 1-612.8, up to a maximum of \$4,000 for any 1 year. While away from their homes or regular places of business in the performance of the duties of the Commission, members shall be allowed travel expenses, including per diem in lieu of substance. (1973 Ed., § 31-2004; Apr. 6, 1977, D.C. Law 1-104, § 4, 23 DCR 8734; Mar. 3, 1979, D.C. Law 2-139, § 3205(y), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Mar. 16, 1989, D.C. Law 7-217, § 2(d), 36 DCR 523.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 1-104. — See note to § 31-1601.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respec-

tively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law 3-81 was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980 and May 20, 1980, respectively. Signed by the

Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-217. — See note to § 31-1609.

2-139. — See § 1-637.1.

§ 31-1605. Same — Transfer of positions; personnel; establishment of panels.

(a) There shall be transferred to the Commission such positions and their funding that formerly were assigned to the Board of Higher Education for the approval and licensure of post-secondary institutions.

(b) Personnel shall be appointed and compensation fixed in accordance with the provisions of Chapter 6 of Title 1.

(c) The Commission may set up panels of persons qualified to inspect, evaluate and make recommendations concerning the approval for licensure of the several kinds of institutions covered by this chapter. (1973 Ed., § 31-2005; Apr. 6, 1977, D.C. Law 1-104, § 5, 23 DCR 8734; Mar. 3, 1979, D.C. Law 2-139, § 3205(y), 25 DCR 5740; Mar. 16, 1989, D.C. Law 7-217, § 2(e), 36 DCR 523.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 1-104. — See note to § 31-1601.

Legislative history of Law 2-139. — See note to § 31-1604.

Legislative history of Law 7-217. — See note to § 31-1609.

2-139. — See § 1-637.1.

Supersession by Comprehensive Merit

Personnel Act. — The authority of the Educational Institution Licensure Commission to appoint (and hence to promote) its personnel did not survive the passage of the Comprehensive Merit Personnel Act (CMPA). *Sims v. District of Columbia*, App. D.C., 531 A.2d 648 (1987).

Cited in *Goode v. Antioch Univ.*, App. D.C., 544 A.2d 704 (1988).

§ 31-1606. Same — Regulations; review of licensed institutions; validity of current licenses.

(a)(1) The Commission shall license degree granting institutions and institutions that give instruction that result in credit toward a degree as follows:

(A) A provisional license shall be awarded to every institution upon initial licensure, which shall be for such period as the Commission deems necessary before the institution is eligible for a permanent license. The award of the provisional license shall be based upon the Commission's determination that the institution complies, or can within a reasonable time comply with all requirements of this chapter, and shall be subject to conditions that the Commission deems necessary to achieve full compliance with this chapter.

(B) Once a provisional license has been awarded, the Commission shall award a permanent license, subject to periodic review in accordance with subsection (b) of this section, if the Commission determines that an accredited educational institution is in full compliance with the provisions of this chapter.

(2) In accordance with procedures consistent with subchapter I of Chapter 15 of Title 1, the Commission may suspend or revoke the license of an institution for failure to comply with the provisions of this chapter and regulations issued pursuant to this chapter may reduce a permanent license to a provisional license, and refuse to issue a license.

(3) The Mayor shall, within 180 days of March 16, 1989, issue rules to implement the provisions of the chapter pursuant to subchapter I of Chapter 15 of Title 1, that shall include, but not be limited to, a schedule of licensing fees and charges and standards and requirements for licensure of degree granting and non-degree granting programs. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the proposed rules in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(4) To the extent consistent with this chapter, the Commission shall utilize the rules of the Board of Higher Education entitled "Regulations Relating to the Licensing of Institutions Which Confer Degrees," issued July 1, 1970, until the rules are amended or repealed.

(5) The Proprietary School Regulations, issued October 1, 1971 (Reg. 71-30; 16 DCMR 12), shall continue in effect until repealed or amended by rules adopted pursuant to paragraph (3) of this subsection.

(b)(1) The Commission may undertake the following:

(A) An independent evaluation of an educational institution's facilities and programs that are located in the District for purposes of initial licensure of an educational institution;

(B) A periodic review of any nonaccredited degree-granting licensee;

(C) A periodic review of any nondegree granting educational institution; and

(D) A periodic review of any branch or extension of an accredited degree-granting licensee that is located outside of the District.

(2) The Commission may make an independent evaluation of an institution's facilities and programs outside the District for purposes of initial licensure of an institution that seeks to operate a branch or extension within the District and the periodic review of a licensee that is not accredited.

(3) The Commission's periodic review of facilities and programs of an accredited licensee shall, except as specified in paragraph (1) of this subsection, be made only by means of a Commission observer of an evaluation by a regional accrediting association, or, if the programs are limited to a specialty, by a specialized accrediting association.

(4) The Commission may make an on-site investigation as authorized by this subsection to conduct any evaluation authorized by this subsection and to investigate a complaint or other appearance of failure by a licensee to comply with the requirements of this chapter.

(c) Nothing in this chapter shall be construed to invalidate a current license to operate an educational institution held by any person in the District of Columbia on March 16, 1989, except that every institution operating in the District of Columbia, with or without a license, on March 16, 1989, shall come into compliance with the provisions of the chapter and rules issued pursuant to the chapter within a reasonable time, as provided in the rules.

(d) The Commission is authorized to charge any institution that is licensed under this chapter for the costs of the Commission's independent evaluations of the institution's facilities and the Commission's observations of evaluations

made by accrediting associations. Any institution operating an educational program within the District shall establish, to the satisfaction of the Commission, that the program offered will be in accordance with the educational standards of the Commission. (1973 Ed., § 31-2006; Apr. 6, 1977, D.C. Law 1-104, § 6(b)-(e), 23 DCR 8734; Sept. 6, 1980, D.C. Law 3-83, § 2, 27 DCR 2894; Mar. 14, 1985, D.C. Law 5-159, § 20, 32 DCR 30; Aug. 1, 1985, D.C. Law 6-15, § 6, 32 DCR 3570; Mar. 16, 1989, D.C. Law 7-217, § 2(f), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(c), 38 DCR 333.)

Cross references. — As to licensing of institutions of learning to confer degrees, see §§ 29-815 to 29-818.

Section references. — This section is referred to in § 31-1611.

Legislative history of Law 1-104. — See note to § 31-1601.

Legislative history of Law 3-83. — Law 3-83 was introduced in Council and assigned Bill No. 3-259, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 20, 1980, and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-200 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20,

1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-217. — See note to § 31-1609.

Legislative history of Law 8-239. — See note to § 31-1602.

Cited in *Nova Univ. v. Educational Inst. Licensure Comm'n*, App. D.C., 483 A.2d 1172 (1984), cert. denied, 470 U.S. 1054, 105 S. Ct. 1759, 84 L. Ed. 2d 822 (1985).

§ 31-1607. Same — Functions.

In addition to those duties specified in other sections of this chapter, the Commission shall:

(1) Advise the Mayor and the Council with respect to the postsecondary educational needs of the District of Columbia;

(2) File with the Mayor and the Council quarterly reports relating to:

(A) The educational institutions granted or denied licenses under this chapter during the reporting period; and

(B) Other matters that come under the Commission's purview;

(3) Receive, and cause to be maintained, copies of student academic records in conformity with the following provisions:

(A) In the event an educational institution operating in the District, or any educational institution licensed under this chapter operating outside of the District, proposes to discontinue its operation and has no other repository for its records, the chief administrative officer, by whatever title designated, of the institution shall cause to be filed with the Commission the original or legible true copies of all records of the institution specified by the Commission. The records shall include, at a minimum, the academic records of each former student;

(B) The Commission shall maintain and dispose of the records in accordance with the provisions of Chapter 29 of Title 1. Academic records shall

be maintained for at least 50 years from the date the student attended the institution;

(C) The Commission is authorized to charge an institution for all costs involved in the transfer of records; and

(4)(A) In the event it appears to the Commission that the records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the Commission, the Commission may apply to the Superior Court of the District of Columbia for an order authorizing the Commission to seize and take possession of the records; and

(B) Any chief officer or member of a governing board of an institution who willfully fails to comply with the provisions of this subsection or willfully aids and abets any person in a scheme to avoid the requirements of this subsection may be held personally liable for all costs and damages resulting from the conduct, in addition to other penalties provided by this chapter. (1973 Ed., § 31-2007; Apr. 6, 1977, D.C. Law 1-104, § 7, 23 DCR 8734; Mar. 16, 1989, D.C. Law 7-217, § 2(g), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(d), 38 DCR 333.)

Cross references. — As to licensing of institutions of learning to confer degrees, see §§ 29-815 to 29-818.

Legislative history of Law 1-104. — See note to § 31-1601.

Legislative history of Law 7-217. — See note to § 31-1609.

Legislative history of Law 8-239. — See note to § 31-1602.

Adjudication of disputes. — The Educational Institution Licensure Commission had neither authority to adjudicate the dispute between student and regulated institution nor the power to award the money damages the student sought. *Goode v. Antioch Univ.*, App. D.C., 544 A.2d 704 (1988).

§ 31-1608. Supplemental funding.

The Mayor and the Council shall be authorized to obtain supplemental funding for the Commission. The Council shall approve the receipt of any such supplemental funding. (1973 Ed., § 31-2008; Apr. 6, 1977, D.C. Law 1-104, § 8, 23 DCR 8734.)

Legislative history of Law 1-104. — See note to § 31-1601.

§ 31-1609. Postsecondary educational institution; requirements.

(a) No person or postsecondary educational institution incorporated in the District of Columbia or outside of the District of Columbia shall operate a postsecondary educational institution in the District of Columbia, offer postsecondary education, have the power to grant or confer or offer to grant or confer a postsecondary degree or a diploma or certificate, offer postsecondary courses for credit, or issue transcripts or other documents to reflect credit toward a postsecondary degree, diploma or certificate, unless:

(1) The institution is granted a license to do so from the Commission or granted an exemption by the Commission in accordance with this chapter; and

(2) The institution is either organized or chartered in the District of Columbia, or organized or chartered outside of the District of Columbia and is registered as a foreign corporation pursuant to § 29-565, or § 29-399, or is otherwise properly authorized to do business in the District of Columbia.

(b) No person shall state or imply that its educational program or course of instruction is approved for veteran's training in the District by the District of Columbia State Approving Agency or by the United States Veterans Administration, unless that person has obtained proper approval from the commission.

(c) Except as provided for in this chapter, no person shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, a degree, diploma, or certificate.

(d) The Commission, before granting any license, may require satisfactory evidence:

(1) That, in the case of an individual, unincorporated group of individuals, or incorporated institution, the individual, a majority of the group, or a majority of the trustees, directors, or managers of the incorporated institution are persons of good repute and qualified to conduct an institution of learning; and

(2) That no degree shall be awarded by an institution that is not accredited if more than one-half of the requirements for the degree are earned by correspondence or extramural study, unless this fact is conspicuously noted upon the degree conferred.

(e) No degree shall be granted in medicine or any healing art, or in dentistry, for study pursued or work done by correspondence. (Apr. 6, 1977, D.C. Law 1-104, § 9, as added Mar. 16, 1989, D.C. Law 7-217, § 2(h), 36 DCR 523; Feb. 5, 1994, D.C. Law 10-68, § 29(a), 40 DCR 6311.)

Legislative history of Law 7-217. — Law 7-217 was introduced in Council and assigned Bill No. 7-86, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C.

Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

§ 31-1610. Exempt institutions.

(a) The following types of educational institutions or activities are excluded from the coverage of this chapter:

(1) Courses of instruction not purporting to lead to a degree conducted by any person solely for the training of the employees of the person, and for which no fee is charged;

(2) Education offered by the District or federal government or any instrumentality of the governments, except course approval for veterans under an Act to amend Chapter 35 of Title 38, United States Code, to provide that after the expiration of the Korean conflict veterans' education and training

program, approval of courses under the war orphan's educational assistance program shall be by State approving agencies (38 U.S.C. § 3500 et seq.);

(3) Education solely avocational or recreational in nature and not leading to a degree and institutions offering the education exclusively, as determined by the Commission;

(4) Education offered by an eleemosynary or nonprofit institution, organization, or agency, if no fee is charged for the education and no credit toward a degree or any degree, diploma, or certificate is awarded;

(5) Courses or programs of instruction given by or approved by a professional body, fraternal organization, civic club, or benevolent order principally for the professional education of its own members or advancement or similar purpose and for which no degree or degree credit is awarded and for which there is no public advertising; and

(6) An educational institution that is organized or chartered outside of the District of Columbia and does not operate in the District of Columbia, except that any agent of an institution who operates in the District shall not be exempt, and the Commission may apply the standards of this chapter to the institution in determining whether to license an agent.

(b) A degree-granting institution shall be entitled to a conditional exemption from all other provisions of this chapter if, upon request to the Commission:

(1) It can show that it has been authorized by the Congress of the United States to grant degrees;

(2) It is accredited by a regional accrediting association recognized by the United States Department of Education;

(3) It files annually with the Commission the following:

(A) A current audited financial statement of the institution;

(B) A certified statement as to the institution's accreditation status, including whether any conditions have been imposed and whether any action has been taken toward revoking or limiting that status; and

(C) A copy of each course catalogue and a response to the Commission's annual data survey;

(4) It makes provision for a representative of the Commission to serve as an observer on all visits to the institution by evaluators from a regional accrediting association; and

(5) It furnishes to the Commission a copy of all reports submitted to and received from the accreditation association, including the reports of an evaluation submitted to the institution by the accrediting association and notices of accrediting association action regarding accreditation of the institution.

(c) An institution entitled to a conditional exemption under subsection (b) of this section that is required by a regional accrediting association to show cause why its accreditation should not be revoked, or that has had its accreditation withdrawn, shall notify the Commission immediately of the action by the regional accrediting association. The exemption shall expire and the institution shall become fully subject to the licensing requirements of this chapter as of the date it receives notice of the withdrawal of accreditation status by the regional accrediting association.

(d) The Commission, upon request, may reinstate an institution's conditional exemption once accreditation is re-established and the Commission has determined that it meets the provisions of this chapter appropriate to the exempt status.

(e) A conditional exemption authorized by this section extends only to programs or courses within the scope of the institution's accreditation as certified by the accrediting association.

(f) The Commission shall issue a conditional exemption to an off-campus program offered within the District of Columbia by an unconditionally accredited degree training institution or group of institutions. All other requirements of conditional exemptions under this section shall apply to the programs, when the Commission determines that:

(1) The local offering is for the institution's own students, regularly enrolled on its home campus and does not fulfill more than 25% of the normal degree requirements; or

(2) The local offering is open only to employees of a person, and there is no cost to the employee.

(g) Nothing shall be stated or implied, in any diploma, degree, certificate, or document evidencing same, or elsewhere in the publications or correspondence of the institution that a program excluded from the requirements of this chapter has been reviewed, approved, or authorized by the Commission, the District government or any officer of the District government.

(h) Any self study undertaken by an educational institution as part of the accreditation process, any site evaluation by an accrediting association, or any other report submitted by the educational institution to the accrediting association or by the accrediting association to the educational institution that contains an evaluation judgment about the institution that is not prepared for publication shall, when submitted to the Commission in accordance with this chapter, be exempt from public disclosure under the provisions of subchapter II of Chapter 15 of Title 1, and the Commission shall not disclose the report or take official licensure action solely on the basis of the contents of the report. The Commission shall disclose whether or not an educational institution has received the award, reaffirmation, amendment, or revocation of accreditation from an accrediting association. (Apr. 6, 1977, D.C. Law 1-104, § 10, as added Mar. 16, 1989, D.C. Law 7-217, § 2(h), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(e), 38 DCR 333; Feb. 5, 1994, D.C. Law 10-68, § 29(b), 40 DCR 6311.)

Legislative history of Law 7-217. — See note to § 31-1609.

Legislative history of Law 8-239. — See note to § 31-1602.

Legislative history of Law 10-68. — See note to § 31-1609.

§ 31-1611. Bond or surety requirement; Mayor to issue rules.

The Mayor may promulgate rules, subject to review by the Council as provided in § 31-1606(a), to establish a bond or surety requirement not to exceed \$250,000 per institution based on the number of students and cost of

instruction and \$3,000 per agent. The bond or security for the institution shall be for the purpose of protecting students should an institution breach its contract with its students, declare bankruptcy or otherwise terminate its educational program without providing adequate student refunds. The bond or security for the agent shall be for the purpose of protecting students from misrepresentation of the education or credentials to be received. The rules may allow the Commission to waive the surety requirement for a financially sound, nonprofit institution that has been licensed for 5 consecutive years. (Apr. 6, 1977, D.C. Law 1-104, § 11, as added Mar. 16, 1989, D.C. Law 7-217, § 2(h), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(f), 38 DCR 333.)

Effect of amendments. — D.C. Law 8-239 added the fourth sentence.

Legislative history of Law 8-239. — See note to § 31-1602.

Legislative history of Law 7-217. — See note to § 31-1609.

§ 31-1612. Violations; penalties.

(a) Any person or persons who, directly or indirectly, participate in, aid, or assist in offering postsecondary education or the operation of a postsecondary educational institution by any unlicensed individual or individuals, association, or institution, or by any individual or individuals, association, or institution whose license has been revoked, who advertises or claims any authority to offer education, except pursuant to the provisions of this chapter, or who violates a provision of this chapter shall be guilty of a misdemeanor, and upon conviction in the Superior Court of the District of Columbia shall be punished by a fine of not more than \$500.

(b) Each day of noncompliance shall constitute a separate violation of this chapter.

(c) Violations of this chapter shall be prosecuted in the District of Columbia Superior Court by the Corporation Counsel of the District of Columbia.

(d) Nothing contained in this chapter shall preclude any person from being subject to a penalty under provisions of § 28-3904, if the person engages in an unlawful trade practice. (Apr. 6, 1977, D.C. Law 1-104, § 12, as added Mar. 16, 1989, D.C. Law 7-217, § 2(h), 36 DCR 523.)

Legislative history of Law 7-217. — See note to § 31-1609.

CHAPTER 17. MEDICAL AND DENTAL COLLEGES.

Subchapter I. Registration.

- Sec.
31-1701. Registration of medical and dental colleges — Required; permit.
31-1702. Same — Application.
31-1703. Penalty for failure to register.
31-1704. Injunction against operation of college.
31-1705. Repeal provisions.

Subchapter II. Financial Assistance.

- 31-1711. Purpose.

Sec.

- 31-1712. Grants from Secretary of Education — Authorized.
31-1713. Same — Application.
31-1714. Same — Regulations.
31-1715. Same — Payment.
31-1716. Payments by Mayor to medical and dental schools — Limitations.
31-1717. Same — Applications.
31-1718. Same — Method of payment.
31-1719. Definitions.

Subchapter I. Registration.

§ 31-1701. Registration of medical and dental colleges — Required; permit.

It shall be unlawful for any medical or dental college claiming the authority to confer, or actually conferring, the degree of doctor of medicine, or doctor of dental surgery, not incorporated by a special act of Congress, to conduct its business in the District of Columbia, unless such college shall be registered by the Mayor of the District of Columbia and granted by him a written permit to commence or continue business in said District in compliance with the requirements of this subchapter. (May 4, 1896, 29 Stat. 112, ch. 154, § 1; 1973 Ed., § 31-901.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1702. Same — Application.

It shall be the duty of the proper officers of any such college, before commencing or continuing business, to apply to the said Mayor for registration and a permit to commence or continue business; and the Council of the District of Columbia is hereby authorized and required to make such regulations concerning the form of such application, the evidence to be adduced in support thereof, and the method of taking such evidence as it may deem best, and shall have power, and it shall be its duty, to give public notice of all hearings upon such applications; and no registration and permit shall be granted until after

the Council shall have, by the inquiry and hearing hereinbefore provided for and such other inquiry as it may see fit to make, satisfied itself that all such medical or dental colleges are fully equipped, both by the character and fitness of the faculty and the sufficiency of their appliances, to give suitable and sufficient instruction in the theory and practice of medicine or dental surgery. (May 4, 1896, 29 Stat. 113, ch. 154, § 2; 1973 Ed., § 31-902.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(241) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1703. Penalty for failure to register.

Such of the officers and of the faculty of any such medical or dental college in existence on May 4, 1896, and of every such college thereafter sought to be opened in said District, which shall continue or commence to offer instruction in such capacity without first obtaining registration and permit, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Superior Court of the District of Columbia, upon an information similar to that filed in the case of violations of the police regulations made by the said Council of the District of Columbia, shall be fined not less than \$25 nor more than \$250, and in default of payment thereof shall be imprisoned in the common jail of said District not less than 30 days nor more than 90 days; said fines when collected to be paid into the Treasury of the United States to the credit of the District of Columbia. (May 4, 1896, 29 Stat. 113, ch. 154, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 31-903.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(242) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1704. Injunction against operation of college.

In any case when such action shall be necessary in the opinion of the said Mayor to give full effect to the intent of this subchapter he shall have power, and it shall be his duty, to file in the Superior Court of the District of Columbia, in the name of the said District, a petition against the proper parties praying an injunction against the opening or continuance of any such college not registered and granted a permit as aforesaid; and jurisdiction is hereby conferred upon such court to hear and determine such causes. (May 4, 1896, 29 Stat. 113, ch. 154, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(35); 1973 Ed., § 31-904.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1705. Repeal provisions.

All acts and parts of acts enacted prior to May 4, 1896, and all charters obtained by any medical or dental college prior to March 4, 1896, under the general corporation laws in force in said District, so far as inconsistent with this subchapter, are hereby repealed. (May 4, 1896, 29 Stat. 113, ch. 154, § 6; 1973 Ed., § 31-905.)

Subchapter II. Financial Assistance.

§ 31-1711. Purpose.

It is the purpose of this subchapter to assist private nonprofit medical and dental schools in the District of Columbia in their critical financial needs in meeting the operational costs required to maintain quality medical and dental educational programs and to increase the number of students in such institutions as a necessary health manpower service to the metropolitan area of the District of Columbia. (Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 302; 1973 Ed., § 31-921.)

§ 31-1712. Grants from Secretary of Education — Authorized.

(a) The Secretary of Education (hereinafter in this subchapter referred to as the “Secretary”) is authorized to make grants to the Mayor of the District of

Columbia (hereinafter in this subchapter referred to as the "Mayor") in amounts the Secretary determines to be the minimum amounts necessary to carry out the purposes of this subchapter. The total amount of grants under this section for any fiscal year shall not exceed the sum of:

(1) The product of \$5,000 times the number of full-time students enrolled in private nonprofit accredited medical schools in the District of Columbia; and

(2) The product of \$3,000 times the number of full-time students enrolled in private nonprofit accredited dental schools in the District of Columbia.

(b) For the purposes of this section and § 31-1716, in determining eligibility for, and the amount of, grants with respect to private nonprofit medical and dental schools, consideration shall be given to any grants made to such schools pursuant to the portion of the program under § 773 of the Public Health Service Act relating to financial assistance to schools which are in serious financial straits to aid them in meeting their costs of operation.

(c) There are authorized to be appropriated such sums as may be necessary for the fiscal year ending September 30, 1977, to make grants under this section. (Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 303; 1973 Ed., § 31-922; Aug. 24, 1974, 88 Stat. 763, Pub. L. 93-389, § 3; June 4, 1976, 90 Stat. 682, Pub. L. 94-308.)

Section references. — This section is referred to in §§ 31-1713, 31-1714, 31-1715, and 31-1716.

References in text. — "Secretary of Education" was substituted for "Secretary of Health, Education and Welfare" in subsection (a) of this section pursuant to § 301 of the Act of October 17, 1979, 93 Stat. 677, Pub. L. 96-88.

"Section 773 of the Public Health Service Act," referred to in subsection (b) of this subsection, was codified as 42 U.S.C. § 295f-3, and was repealed by the Act of October 12, 1976, 90 Stat. 2293, Pub. L. 94-484.

Change in government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1713. Same — Application.

The Secretary may from time to time set dates by which applications for grants under § 31-1712 for any fiscal year must be filed by the Mayor. A grant under § 31-1712 may be made only if application therefor:

(1) Is approved by the Secretary;

(2) Contains such information as the Secretary may require to make the determinations required of him under this subchapter and such assurances as he may find necessary to carry out the purposes of this subchapter; and

(3) Provides for such fiscal control and accounting procedures and reports and access to the records of the Mayor and the applicant schools as the Secretary may from time to time require in carrying out his functions under this subchapter. (Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 304; 1973 Ed., § 31-923.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1714. Same — Regulations.

For the purposes of § 31-1712 and § 31-1716, regulations of the Secretary shall include provisions relating to the determination of the number of students enrolled in a school, or in a particular year-class in a school, as the case may be, on the basis of estimates, or on the basis of the number of students who were enrolled in a school, or in a particular year-class, as the case may be, in an earlier year, or on such basis as he deems appropriate for making such determinations. (Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 305; 1973 Ed., § 31-924.)

§ 31-1715. Same — Payment.

Grants under § 31-1712 may be paid in advance or by way of reimbursement at such intervals as the Secretary may find necessary and with appropriate adjustments on account of overpayments or underpayments previously made. (Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 306; 1973 Ed., § 31-925.)

§ 31-1716. Payments by Mayor to medical and dental schools — Limitations.

From funds received under § 31-1712, the Mayor shall make payments (in amounts determined by the Secretary under such § 31-1712) to private nonprofit schools of medicine and dentistry in the District of Columbia. The total of the payments under this section in any fiscal year to a medical school shall not exceed the product of \$5,000 times the number of full-time students enrolled in such school, and the total of payments to a dental school shall not exceed the product of \$3,000 times the number of full-time students enrolled in such school. (Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 307; 1973 Ed., § 31-926.)

Section references. — This section is referred to in §§ 31-1712, 31-1714, 31-1717, and 31-1718.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1717. Same — Applications.

The Mayor may from time to time set dates by which applications for payments by the Mayor under § 31-1716 for any fiscal year must be filed. A payment under § 31-1716 by the Mayor may be made only if the application therefor:

(1) Is approved by the Mayor upon his determination that the applicant meets the eligibility conditions of this subchapter; and

(2) Contains such information as the Mayor and the Secretary may require to make determinations required under this subchapter and such assurances as they may find necessary to carry out the purposes of this subchapter. (Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title III, § 308; 1973 Ed., § 31-927.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1718. Same — Method of payment.

Payments under § 31-1716 by the Mayor may be paid in advance or by way of reimbursement at such intervals as the Mayor may find necessary and with appropriate adjustments on account of overpayments or underpayments previously made. (Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title III, § 309; 1973 Ed., § 31-928.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 31-1719. Definitions.

For purposes of this subchapter:

(1) The term “full-time students” means students pursuing a full-time course of study in an accredited school of medicine or school of dentistry leading to a degree of Doctor of Medicine, Doctor of Dentistry, or an equivalent degree.

(2) The terms “school of medicine” and “school of dentistry” mean a school in the District of Columbia which provides training leading, respectively, to a degree of Doctor of Medicine and Doctor of Dentistry, or an equivalent degree, and which is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education of the United States.

(3) The term "nonprofit" as applied to a school of medicine or a school of dentistry means one which is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. (Jan. 5, 1971, 84 Stat. 1325, Pub. L. 91-650, title III, § 310; 1973 Ed., § 31-929.)

References in text. — "Secretary of Education" was substituted for "Commissioner of Education" in paragraph (2) of this section pursuant to § 301 of the Act of October 17, 1979, 93 Stat. 677, Pub. L. 96-88.

CHAPTER 18. GALLAUDET COLLEGE.

Subchapter I. Continuation and Administration.

Subchapter II. Model Secondary School for the Deaf.

Sec.

31-1801. Appropriation for indigent blind children.

31-1802. Transfer of real estate.

31-1803. Supervision.

31-1804. Report of Convention of American Instructors of the Deaf.

31-1805 to 31-1814. [Repealed].

Sec.

31-1821 to 31-1823. [Repealed].

Subchapter III. Demonstration Elementary School for the Deaf.

31-1831 to 31-1834. [Repealed].

Subchapter I. Continuation and Administration.

§ 31-1801. Appropriation for indigent blind children.

The indefinite appropriation to pay for the instruction of the indigent blind children of the District of Columbia, formerly instructed in Gallaudet University shall be paid out of the revenues of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1101, ch. 424, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1; 1973 Ed., § 31-1020.)

References in text. — “Gallaudet University” was substituted for “Gallaudet College” pursuant to § 31-1841.1. “Gallaudet College” had

previously been substituted for “Columbia Institution for the Deaf” pursuant to former § 31-1805.

§ 31-1802. Transfer of real estate.

The title to all that parcel of land lying between the west boundary of West Virginia Avenue, as said avenue was laid on July 1, 1916, with a width of 66 feet, and the east boundary of the grounds of Gallaudet University, said parcel of land fronting on Florida Avenue about ten and one-half feet and containing one-tenth of an acre, more or less, and being formerly part of the Baltimore and Ohio Railroad right-of-way, shall be vested in Gallaudet University, United States of America, trustee, and the Secretary of the Interior is authorized and directed to issue a patent for the said parcel of land to the said Gallaudet College. (July 1, 1916, 39 Stat. 310, ch. 209; 1973 Ed., § 31-1021.)

References in text. — “Gallaudet University” was substituted for “Gallaudet College” pursuant to § 31-1841.1. “Gallaudet College” had previously been substituted for “the Columbia Institution for the Deaf” throughout this section, pursuant to former § 31-1805.

Adjustment of boundaries. — See Act of August 3, 1939, 53 Stat. 1179, ch. 414, §§ 1 to 3.

§ 31-1803. Supervision.

The Secretary of Education is charged with the supervision of public business relating to Gallaudet University. (R.S., § 441; Mar. 4, 1911, 36 Stat. 1422, ch. 285; 1940 Reorg. Plan No. IV, § 11; 1953 Reorg. Plan No. 1; June 18, 1954, 68 Stat. 265, ch. 324, § 1; 1973 Ed., § 31-1022.)

References in text. — “Gallaudet University” was substituted for “Gallaudet College” pursuant to § 31-1841.1. “Gallaudet College” had previously been substituted for “Columbia Institution for the Deaf” at the end of this section, pursuant to former § 31-1805.

“Secretary of Education” was substituted for “Secretary of Health, Education and Welfare” near the beginning of this section, pursuant to § 301 of the Act of October 17, 1979, 93 Stat. 677, Pub. L. 96-88.

§ 31-1804. Report of Convention of American Instructors of the Deaf.

The Convention of American Instructors of the Deaf shall report to Congress, through the President of Gallaudet University at Washington, District of Columbia, such portions of its proceedings and transactions as its officers shall deem to be of general public interest and value concerning the education of the deaf. (Jan. 26, 1897, 29 Stat. 499, ch. 94, § 4; Mar. 4, 1911, 36 Stat. 1422, ch. 285; June 18, 1954, 68 Stat. 265, ch. 324, § 1; 1973 Ed., § 31-1024.)

References in text. — “Gallaudet University” was substituted for “Gallaudet College” pursuant to § 31-1841.1. “Gallaudet College” had

previously been substituted for “Columbia Institution for the Deaf” near the beginning of this section, pursuant to former § 31-1805.

§§ 31-1805 to 31-1814. Successor to Columbia Institution for the Deaf; purposes; property rights; outstanding obligations; conveyances; gifts of property; Board of Directors — Appointment; composition; terms; removal; powers; financial transactions and accounts; annual report to the Secretary of Education; appropriations; grant of certain lands — Transfer; delivery of deed.

Repealed. Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.

Subchapter II. Model Secondary School for the Deaf.

§§ 31-1821 to 31-1823. Authorization of appropriations; definitions; agreement with Gallaudet College; annual report.

Repealed. Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.

Subchapter III. Demonstration Elementary School for the Deaf.

§§ 31-1831 to 31-1834. Operation authorized; definitions; authorization of appropriations; design and construction of facilities.

Repealed. Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.

CHAPTER 18A. EDUCATION FOR THE DEAF.

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- 31-1842.10. International students.
- 31-1842.11. Authorization of appropriations.

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31-1843.1 to 31-1843.4. [Repealed].

Revision of chapter. — Public Law 102-421 revised this chapter by repealing §§ 31-1841.4 through 31-1841.6 and §§ 31-1843.1 through 31-1843.4; deleting §§ 31-1844.7 and 31-1844.8; renumbering §§ 31-1842.1 and 31-1842.2 as §§ 31-1841.4a and 31-1841.4b,

§§ 31-1844.1 through 31-1844.6 as §§ 31-1842.2a through 31-1842.6 and §§ 31-1844.9 and 31-1844.10 as §§ 31-1842.9 and 31-1842.11; and adding §§ 31-1841.3a, 31-1841.3b, 31-1842.7, 31-1842.8 and 31-1842.10.

Subchapter I. Gallaudet University; National Technical Institute for the Deaf.

Subpart A. Gallaudet University.

§ 31-1841.1. Continuation of Gallaudet College as Gallaudet University.

(a) *Gallaudet University.* — The Gallaudet College created by an Act entitled “An Act to amend the charter of the Columbia Institution for the Deaf, change its name, define its corporate powers, and provide for its organization and administration, and for other purposes” is continued as a body corporate under the name of Gallaudet University. Hereafter, Gallaudet College shall be known as Gallaudet University and have perpetual succession and shall have the powers and be subject to the limitations contained in this chapter.

(b) *Purpose.* — The purpose of Gallaudet University shall be to provide education and training to individuals who are deaf and otherwise to further the education of individuals who are deaf. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 101; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 151(a)(1), (4); Aug. 11, 1993, 107 Stat. 732, Pub. L. 103-73, § 203(a).)

Effect of amendments. — Section 203(a) of Public Law 103-73 inserted a comma following “Hereafter” in the second sentence of (a).

References in text. — “An Act to amend the charter of the Columbia Institution for the

Deaf, change its name, define its corporate powers, and provide for its organization and administration, and for other purposes,” referred to in subsection (a), is 68 Stat. 265.

§ 31-1841.2. Property rights.

(a) *Property rights described.* — Gallaudet University is vested with all the property and the rights of property, and shall have and be entitled to use all authority, privileges, and possessions and all legal rights which it has, or which it had or exercised under any former name, including the right to sue and be sued and to own, acquire, sell, mortgage, or otherwise dispose of property it may own now or hereafter acquire. Gallaudet University shall also be subject to all liabilities and obligations now outstanding against the corporation under any former name.

(b) *Disposal of real property.* — (1) With the approval of the Secretary, the Board of Trustees of Gallaudet University may convey fee simple title by deed, convey by quitclaim deed, mortgage, or otherwise dispose of any or all real property title to which is vested in Gallaudet University, Gallaudet College, the Columbia Institution for the Deaf, or any predecessor corporation.

(2) The proceeds of any such disposition shall be considered a part of the capital structure of the corporation, and may be used solely for the acquisition of real estate for the use of the corporation, for the construction, equipment, or improvement of buildings for such use, or for investment purposes, but, if invested, only the income from the investment may be used for current expenses of the corporation. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 102; Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(b).)

Effect of amendments. — Section 203(b) of Public Law 103-73 in (b)(1) deleted “of Education” following “Secretary”; and in (b)(2) in-

serted a comma following “but” and following “if invested.”

§ 31-1841.3. Board of Trustees.

(a) *Composition of the Board.* — (1) Gallaudet University shall be under the direction and control of a Board of Trustees, composed of 21 members who shall include:

(A) Three public members of whom (i) one shall be a United States Senator appointed by the President of the Senate, and (ii) two shall be Representatives appointed by the Speaker of the House of Representatives; and

(B) Eighteen other members, all of whom shall be elected by the Board of Trustees and of whom one shall be elected pursuant to regulations of the

Board of Trustees, on nomination by the Gallaudet University Alumni Association, for a term of 3 years.

(2) The members appointed from the Senate and House of Representatives shall be appointed for a term of 2 years at the beginning of each Congress, shall be eligible for reappointment, and shall serve until their successors are appointed.

(3) The Board of Trustees shall have the power to fill any vacancy in the membership of the Board except for public members. Nine trustees shall constitute a quorum to transact business. The Board of Trustees, by vote of a majority of its membership, is authorized to remove any member of their body (except the public members) who may refuse or neglect to discharge the duties of a trustee, or whose removal would, in the judgment of said majority, be to the interest and welfare of said corporation.

(b) *Powers of the Board.* — The Board of Trustees is authorized to:

(1) Make such rules, policies, regulations, and bylaws, not inconsistent with the Constitution and laws of the United States, as may be necessary for the good government of Gallaudet University, for the management of the property and funds of such corporation (including the construction of buildings and other facilities), and for the admission, instruction, care, and discharge of students;

(2) Provide for the adoption of a corporate seal and for its use;

(3) Fix the date of holding their annual and other meetings;

(4) Appoint a president and establish policies, guidelines, and procedures related to the appointments, the salaries, and the dismissals of professors, instructors, and other employees of Gallaudet University, including the adoption of a policy of outreach and recruitment to employ and advance in employment qualified individuals with disabilities, particularly individuals who are deaf or hard of hearing;

(5) Elect a chairperson and other officers and prescribe their duties and terms of office, and appoint an executive committee to consist of 5 members, and vest the committee with such of its powers during periods between meetings of the Board as the Board deems necessary;

(6) Establish such schools, departments, and other units as the Board of Trustees deems necessary to carry out the purpose of Gallaudet University;

(7) Confer such degrees and marks of honor as are conferred by colleges and universities generally, and issue such diplomas and certificates of graduation as, in its opinion, may be deemed advisable, and consistent with academic standards;

(8) Subject to § 31-1842.3, control expenditures of all moneys appropriated by Congress for the benefit of Gallaudet University; and

(9) Control the expenditure and investment of any moneys or funds or property which Gallaudet University may have or may receive from sources other than appropriations by Congress. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 103; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(c), 111; Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(c).)

Effect of amendments. — Section 203(c) of Public Law 103-73 redesignated the former second sentence of (a)(1) as (a)(2), redesignated former (a)(2) as (a)(3), substituted “who shall include” for “selected as follows:” in the introductory language of (a)(1), and inserted a

comma following “Association” in (a)(1)(B); and inserted a comma following the parenthetical language in (b)(1), deleted “individuals who are” preceding “hard of hearing” in (b)(4), and deleted “the provisions of” preceding “§ 31-1842.3” in (b)(8).

§ 31-1841.3a. Elementary and secondary education programs.

(a) *General authority.* — (1)(A) The Board of Trustees of Gallaudet University is authorized, in accordance with the agreement under § 31-1841.3b, to maintain and operate exemplary elementary and secondary education programs, projects, and activities for the primary purpose of developing, evaluating, and disseminating innovative curricula, instructional techniques and strategies, and materials that can be used in various educational environments serving individuals who are deaf or hard of hearing throughout the nation.

(B) The elementary and secondary education programs described in subparagraph (A) of this paragraph shall serve students with a broad spectrum of needs, including students who are lower achieving academically, who come from non-English-speaking homes, who have secondary disabilities, who are members of minority groups, or who are from rural areas.

(C) The elementary and secondary education programs described in subparagraph (A) of this paragraph shall include:

(i) The Kendall Demonstration Elementary School, to provide day facilities for elementary education for students who are deaf from the age of onset of deafness to age fifteen, inclusive, but not beyond the eighth grade or its equivalent, to provide such students with the vocational, transitional, independent living, and related services they need to function independently, and to prepare such students for high school and other secondary study; and

(ii) The Model Secondary School for the Deaf, to provide day and residential facilities for secondary education for students who are deaf from grades nine through twelve, inclusive, to provide such students with the vocational, transitional, independent living, and related services they need to function independently, and to prepare such students for college, other postsecondary opportunities, or the workplace.

(2) The Model Secondary School for the Deaf may provide residential facilities for students enrolled in the school:

(A) Who live beyond a reasonable commuting distance from the school; or

(B) For whom such residency is necessary for them to receive a free appropriate public education within the meaning of part B of the Individuals with Disabilities Education Act.

(b) *Administrative requirements.* — (1) The elementary and secondary education programs shall:

(A) Provide technical assistance and outreach throughout the nation to meet the training and information needs of parents of infants, children, and youth who are deaf or hard of hearing;

(B) Provide technical assistance and training to personnel for use in teaching (i) students who are deaf or hard of hearing, in various educational environments, and (ii) students who are deaf or hard of hearing with a broad spectrum of needs as described in subsection (a); and

(C) Establish and publish priorities for research, development, and demonstration through a process that allows for public input.

(2) To the extent possible, the elementary and secondary education programs shall provide the services required under paragraph (1) in an equitable manner, based on the national distribution of students who are deaf or hard of hearing in educational environments as determined by the Secretary for purposes of § 618(b) of the Individuals with Disabilities Education Act. Such educational environments shall include:

(A) Regular classes;

(B) Resource rooms;

(C) Separate classes;

(D) Separate, public or private, nonresidential schools; and

(E) Separate, public or private, residential schools and homebound or hospital environments.

(3) If a local educational agency, intermediate educational unit, or state educational agency refers a child to, or places a child in, one of the elementary or secondary education programs to meet its obligation to make available a free appropriate public education under part B of the Individuals with Disabilities Education Act, the agency or unit shall be responsible for ensuring that the special education and related services provided to the child by the education program are in accordance with part B of that Act and that the child is provided the rights and procedural safeguards under § 615 of that Act.

(4) If the parents or guardian places a child in one of the elementary or secondary education programs, the University shall:

(A) Notify the appropriate local educational agency, intermediate educational unit, or state educational agency of that child's attendance in the program;

(B) Work with local educational agencies, intermediate educational units, and state educational agencies, where appropriate, to ensure a smooth transfer of the child to and from that program; and

(C) Provide the child a free appropriate public education in accordance with part B of the Individuals with Disabilities Education Act and procedural safeguards in accordance with the following provisions of § 615 of such Act:

(i) Subparagraphs (A), (C), (D), and (E) of paragraph (1) of subsection (b), and paragraph (2) of such subsection.

(ii) Subsection (d), except the portion of paragraph (4) requiring that findings and decisions be transmitted to a state advisory panel.

(iii) Paragraphs (1) through (3) of subsection (e). Paragraph (3) of such subsection is not applicable to a decision by the University to refuse to admit or to dismiss a child, except that, before dismissing any child, the University shall give at least 60 days notice to the child's parents and to the local educational agency in which the child resides.

(iv) Subsection (f). (Aug. 4, 1986, Pub. L. 99-371, § 104, as added Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 112; Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(d); Apr. 9, 1997, D.C. Law 11-255, § 35(a), 44 DCR 1271.)

Effect of amendments. — Section 203(d) of Public Law 103-73 substituted “education” for “educational” in the section heading, substituted “elementary and secondary education programs” for “elementary and secondary programs” throughout (a)(1), substituted “or” for “and individuals who are” in (a)(1)(A), inserted a hyphen after “English” in (a)(1)(B), substituted “students” for “individuals” throughout (a)(1)(C), substituted “deaf from the age of onset of deafness to age fifteen, inclusive but not beyond the eighth grade or its equivalent,” for “deaf” in (a)(1)(C)(i), substituted “deaf from grades nine through twelve, inclusive” for “deaf” in (a)(1)(C)(ii), substituted “infants, children, and youth” for “infants and children” in (b)(1)(A), substituted a period for a semicolon at the end of (b)(1)(C), substituted “program” for “programs” in (b)(4)(A), substituted “the child to and from that program” for “students to and from those programs” in (b)(4)(B), and substituted “a decision” for “decisions” in (b)(4)(C)(iii).

D.C. Law 11-255 validated previously made stylistic corrections in (a)(1)(B) and (C).

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective April 9, 1997.

References in text. — “The Individuals with Disabilities Education Act” and “§ 615 of that Act”, referred to in (a)(2)(B), (b)(3) and (b)(4)(C) are codified at 20 U.S.C. § 1400 et seq. and 20 U.S.C. § 1415, respectively.

“Section 618(b) of the Individuals with Disabilities Education Act”, referred to in (b)(2), is codified at 20 U.S.C. § 1418(b).

§ 31-1841.3b. Agreement with Gallaudet University.

(a) *General authority.* — The Secretary and Gallaudet University shall establish, within one year after October 1, 1992, a new agreement governing the operation and national mission activities, including construction and provision of equipment, of the elementary and secondary education programs at the University. The Secretary and the University shall periodically update the agreement as determined to be necessary by the Secretary or the University.

(b) *Provisions of agreement.* — The agreement shall:

(1) Provide that federal funds appropriated for the benefit of the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf will be used only for the purposes for which appropriated and in accordance with the applicable provisions of this chapter and such agreement;

(2) Provide that the University will make an annual report, to be part of the report required under § 31-1842.4, to the Secretary on the operations and national mission activities of the elementary and secondary education programs, including such other information as the Secretary may consider necessary;

(3) Provide that in the design and construction of any facilities, maximum attention will be given to innovative auditory and visual devices and installations appropriate for the educational functions of such facilities;

(4) Provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by federal funds appropriated for the benefit of the Kendall Demonstration Elementary School or the Model Secondary School for the Deaf will be paid wages at rates

not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a — 276a-5) commonly referred to as the Davis-Bacon Act; except that the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and § 2 of the Act of June 13, 1934 (40 U.S.C. 276c); and

(5) Include such other conditions as the Secretary or the University considers necessary to carry out the purposes of this subpart. (Aug. 4, 1986, Pub. L. 99-371, § 105, as added Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 113; Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(e).)

Section references. — This section is referred to in § 31-1841.3a.

Effect of amendments. — Section 203(e) of Public Law 103-73 substituted “will” for “shall”

in (b)(2), and in (b)(4) substituted “Elementary School or” for “Elementary School and” and substituted “except that” for “and.”

Subpart B. Kendall Demonstration Elementary School.

§ 31-1841.4. Authority of Gallaudet University.

Repealed. Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(1).

Subpart B. National Technical Institute for the Deaf.

§ 31-1841.4a. Authority.

For the purpose of providing a residential facility for postsecondary technical training and education for individuals who are deaf in order to prepare them for successful employment, the institution of higher education with which the Secretary has an agreement under this subpart is authorized to operate and maintain a National Technical Institute for the Deaf. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 111, formerly § 201; renumbered Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(b)(4); Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(f).)

Effect of amendments. — Section 203(f) of Public Law 103-73 corrected internal references in the organic act.

§ 31-1841.4b. Agreement for National Technical Institute for the Deaf.

(a) *General authority.* — (1) The Secretary is authorized to establish or continue an agreement with an institution of higher education for the establishment and operation, including construction and equipment, of a National Technical Institute for the Deaf. The Secretary, in considering proposals from institutions of higher education to enter into an agreement under this chapter, shall give preference to institutions which are located in metropolitan industrial areas.

(2) The Secretary and the institution of higher education with which the Secretary has an agreement under this section shall, within 1 year after October 1, 1992, assess the need for modification of the agreement. The Secretary and the institution of higher education with which the Secretary has an agreement under this section shall also periodically update the agreement as determined to be necessary by the Secretary or the institution.

(b) *Provisions of agreement.* — The agreement shall:

(1) Provide that federal funds appropriated for the benefit of NTID will be used only for the purposes for which appropriated and in accordance with the applicable provisions of this chapter and the agreement made pursuant thereto;

(2) Provide that the Board of Trustees or other governing body of the institution, subject to the approval of the Secretary, will appoint an advisory group to advise the Director of NTID in formulating and carrying out the basic policies governing its establishment and operation, which group shall include individuals who are professionally concerned with education and technical training at the postsecondary school level, persons who are professionally concerned with activities relating to education and training of individuals who are deaf, and members of the public familiar with the need for services provided by NTID;

(3) Provide that the Board of Trustees or other governing body of the institution will prepare and submit to the Secretary, not later than June 1 following the fiscal year for which the report is submitted, an annual report containing an accounting of all indirect costs paid to the institution of higher education under the agreement with the Secretary, which accounting the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and to the Committee on Labor and Human Resources of the Senate, with such comments and recommendations as the Secretary may deem appropriate;

(4) Include such other conditions as the Secretary deems necessary to carry out the purposes of this subpart;

(5) Provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by federal funds appropriated for the benefit of NTID will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with 40 U.S.C. §§ 276a—276a-5 commonly referred to as the Davis-Bacon Act; except that the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and 40 U.S.C. § 276c; and

(6) Establish a policy of outreach and recruitment to employ and advance in employment qualified individuals with disabilities, particularly individuals who are deaf or hard of hearing.

(c) *Limitation.* — If, within 20 years after the completion of any construction (except minor remodeling or alteration) for which such funds have been paid: (1) the facility ceases to be used for the purposes for which it was constructed or the agreement is terminated, unless the Secretary determines that there is

good cause for releasing the institution from its obligation; or (2) the institution ceases to be the owner of the facility, the United States shall be entitled to recover from the applicant or other owner of the facility an amount which has the same ratio with respect to the current market value of the facility as the amount of federal funds expended for construction of such facility bears to the total cost of construction of the facility. The current market value of the facility shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 112, formerly § 202; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(4), 121, 151(a)(4); Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, §§ 202, 203(g).)

Section references. — This section is referred to in §§ 31-1842.4.

Effect of amendments. — Section 202 of Public Law 103-73 substituted “NTID” for “the Institute” in (b)(1), (b)(2), and (b)(5).

Section 203(g) of Public Law 103-73 substituted “National Technical Institute for the Deaf” for “Institute” in the section heading; deleted commas following the first appearance of “Secretary” and following “section” in the first sentence of (a)(2); in (b)(3), substituted “Secretary, not later than June 1 following the

fiscal year for which the report is submitted, and annual report containing” for “Secretary and annual report, including,” substituted “which accounting” for “which report,” and deleted a comma following “Representatives”; deleted “and” at the end of (b)(4); in (b)(5), substituted “except that” for “and” and added “and” at the end; in (b)(6) deleted “individuals who are” preceding “hard”; and in the first sentence of (c), inserted a comma following “If,” and made other stylistic changes.

Subpart C. Model Secondary School for the Deaf.

§§ 31-1841.5, 31-1841.6. Authority of Gallaudet University; agreement with Gallaudet University for model secondary school.

Repealed. Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(1).

Subchapter II. General Provisions.

§§ 31-1842.1, 31-1842.2.

Renumbered.

Editor’s notes. — Public Law 102-421 revised this chapter. Section 101(b)(4) of Pub. L. 102-421 renumbered sections 31-1842.1 and 31-1842.2 as §§ 31-1841.4a and 31-1841.4b.

§ 31-1842.2a. Definitions.

As used in this chapter:

(1) The term “international student” means an individual who:

(A) Is not a citizen or national of, or lawfully admitted for permanent residence in, the United States;

(B) Does not provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen of, or lawfully admitted for permanent residence in, the United States; and

(C) Is not lawfully admitted for permanent residence in American Samoa, Guam, Palau (but only until the Compact of Free Association with Palau takes effect), the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, or the Virgin Islands.

(2) The term “construction” includes construction and initial equipment of new buildings, and expansion, remodeling, and alteration of existing buildings and equipment therein, including architect’s services, but excluding off-site improvements.

(3) The term “institution of higher education” means an educational institution in any state which (A) admits as regular students only individuals having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (B) is legally authorized within such state to provide a program of education beyond secondary education; (C) provides an educational program for which it awards a bachelor’s degree; (D) includes one or more professional or graduate schools; (E) is a public or nonprofit private institution; and (F) is accredited by a nationally recognized accrediting agency or association. For the purpose of subparagraph (F) of this paragraph, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered.

(4) The term “Secretary” means the Secretary of Education.

(5) The term “state” means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (but only until the Compact of Free Association with Palau takes effect).

(6) The term “NTID” means the National Technical Institute for the Deaf.

(7) The term “University” means Gallaudet University. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 201, formerly § 401; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 131, 151(a)(3), (b), Aug. 11, 1993, 107 Stat. 734, Pub. L. 103-73, § 204(a); Apr. 9, 1997, D.C. Law 11-255, § 35(b), 44 DCR 1271.)

Effect of amendments. — Section 204(a) of Pub. L. 103-73, substituted “and” for “or” at the end of (1)(B); deleted former (3) and (5), and redesignated the remaining provisions accordingly.

D.C. Law 11-255 validated a previously made stylistic correction in (3).

Legislative history of Law 11-255. — See note to § 31-1841.3a.

§ 31-1842.2b. Gifts.

The University and NTID are authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of the University or NTID, or for the use, as appropriate, for any programs, departments, or other units as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for the purpose stated in the conveyance or will. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 202, formerly § 402; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 132.)

§ 31-1842.3. **Audit.**

(a) *General Accounting Office authority.* — All financial transactions and accounts of the corporation or institution of higher education, as the case may be, in connection with the expenditure of any moneys appropriated by any law of the United States:

(1) For the benefit of Gallaudet University or for the construction of facilities for its use; or

(2) For the benefit of the National Technical Institute for the Deaf or for the construction of facilities for its use;

shall be settled and adjusted in the General Accounting Office.

(b) *Independent audit.* — Gallaudet University shall have an annual independent financial audit made of the programs and activities of the University. The institution of higher education with which the Secretary has an agreement under § 31-1841.4b shall have an annual independent financial audit made of the programs and activities of such institution of higher education, including NTID, and containing specific schedules and analyses for all NTID funds, as determined by the Secretary.

(c) *Limitations regarding expenditure of funds.* —

(1) *In general.* — No funds appropriated under this chapter for Gallaudet University, including the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf, or for the National Technical Institute for the Deaf may be expended on the following:

(A) Alcoholic beverages;

(B) Goods or services for personal use;

(C) Housing and personal living expenses (but only to the extent such expenses are not required by written employment agreement);

(D) Lobbying, except that nothing in this subparagraph shall be construed to prohibit the University and NTID from educating the Congress, the Secretary, and others regarding programs, projects, and activities conducted at those institutions; or

(E) Membership in country clubs and social or dining clubs and organizations.

(2) *Policies.* — (A) Not later than 180 days after October 1, 1992, the University and NTID shall develop policies, to be applied uniformly, for the allowability of expenditures for each institution. These policies should reflect the unique nature of these institutions. The principles established by the Office of Management and Budget for costs of educational institutions may be used as guidance in developing these policies. General principles relating to allowability and reasonableness of all costs associated with the operations of the institutions shall be addressed. These policies shall be submitted to the Secretary for review and comments, and to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(B) Policies under subparagraph (A) of this paragraph shall include the following:

(i) Noninstitutional professional activities;

- (ii) Fringe benefits;
- (iii) Interest on loans;
- (iv) Rental cost of buildings and equipment;
- (v) Sabbatical leave;
- (vi) Severance pay;
- (vii) Travel; and
- (viii) Royalties and other costs for uses of patents.

(C) The Secretary is not authorized to add items to those specified in subparagraph (B) of this paragraph. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 203, formerly § 403; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 133; Aug. 11, 1993, 107 Stat. 732, 734, Pub. L. 103-73, §§ 202, 204(b); Apr. 9, 1997, D.C. Law 11-255, § 35(c), 44 DCR 1271.)

Section references. — This section is referred to in § 31-1841.3.

Legislative history of Law 11-255. — See note to § 31-1841.3a.

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (c)(2)(B) and (C).

§ 31-1842.4. Reports.

The Board of Trustees of Gallaudet University and the Board of Trustees or other governing body of the institution of higher education with which the Secretary has an agreement under § 31-1841.4b shall prepare and submit an annual report to the Secretary, and to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, not later than 100 days after the end of each fiscal year, which shall include the following:

(1) The number of students during the preceding academic year who enrolled and whether these were first-time enrollments, who graduated, who found employment, or who left without completing a program of study, reported under each of the programs of the University (elementary, secondary, preparatory, undergraduate, and graduate) and of NTID;

(2) For the preceding academic year, and to the extent possible, the following data on individuals who are deaf and from minority backgrounds and who are students (at all educational levels) or employees:

(A) The number of students enrolled full- and part-time;

(B) The number of these students who completed or graduated from each of the educational programs;

(C) The disposition of these students upon graduation/completion of programs at NTID and at the University and its elementary and secondary schools in comparison to students from nonminority backgrounds;

(D) The number of students needing and receiving support services (such as tutoring and counseling) at all educational levels;

(E) The number of recruitment activities by type and location for all educational levels;

(F) Employment openings/vacancies and grade level/type of job and number of these individuals that applied and that were hired; and

(G) Strategies (such as parent groups and training classes in the development of individualized education programs) used by the elementary and secondary programs and the extension centers to reach and actively involve minority parents in the educational programs of their children who are deaf or hard of hearing and the number of parents who have been served as a result of these activities;

(3)(A) The annual audited financial statements and auditor's report of the University, as required under § 31-1842.3; and

(B) The annual audited financial statements and auditor's report of the institution of higher education with which the Secretary has an agreement under § 31-1841.4b, including specific schedules and analyses for all NTID funds, as required under § 31-1842.3, and such supplementary schedules presenting financial information for NTID for the end of the Federal fiscal year as determined by the Secretary;

(4) For the preceding fiscal year, a statement showing the receipts of the University and NTID and from what federal sources, and a statement showing the expenditures of each institution by function, activity, and administrative and academic unit;

(5) A statement showing the use of funds (both corpus and income) provided by the Federal Endowment Program under § 31-1842.7a;

(6) A statement showing how such Endowment Program funds are invested, what the gains or losses (both realized and unrealized) on such investments were for the most recent fiscal year, and what changes were made in investments during that year; and

(7) Such additional information as the Secretary may consider necessary. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 204, formerly § 404; renumbered and amended Oct 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 134; Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(c).)

Section references. — This section is referred to in § 31-1841.3b.

§ 31-1842.5. Monitoring, evaluation, and reporting.

(a) *Activities.* — The Secretary shall conduct monitoring and evaluation activities of the education programs and activities and the administrative operations of the University (including the elementary, secondary, preparatory, undergraduate, and graduate programs) and of NTID. The Secretary may also conduct studies related to the provision of preschool, elementary, secondary, and postsecondary education and other related services to individuals who are deaf or hard of hearing. In carrying out the responsibilities described in this section, the Secretary is authorized to employ such consultants as may be necessary pursuant to § 3109 of Title 5, United States Code.

(b) *Report.* — The Secretary, as part of the annual report required under § 426 of the Department of Education Organization Act, shall include a description of the monitoring and evaluation activities pursuant to subsection (a) of this section, together with such recommendations, including recommendations for legislation, as the Secretary may consider necessary.

(c) *Authorization of appropriations.* — There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, and 1997 to carry out the monitoring and evaluation activities authorized under this section. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 205, formerly § 405; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 135(a); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(d).)

References in text. — “Section 426 of the Department of Education Organization Act”, referred to in (b), is codified at 20 U.S.C. § 3486.

Secretary to submit report. — Section 135(b) of Pub. L. 102-421 provided that not later than 180 days after October 1, 1992, the Secretary of Education shall submit a report to Congress regarding progress made by the Department of Education in implementing the recommendations of the Commission on Education of the Deaf pertaining to the provision of a

free and appropriate public education to children who are deaf, and children who are hard of hearing, and with respect to the establishment of standards for programs and personnel to meet the educational, communicative, and psychological needs of children who are deaf, and children who are hard of hearing. In preparing this report, the Secretary of Education shall solicit input from the community of individuals who are deaf, and individuals who are hard of hearing.

§ 31-1842.6. Liaison for educational programs.

(a) *Designation of liaison.* — Not later than 30 days after August 4, 1986, the Secretary shall designate an individual in the Office of Special Education and Rehabilitative Services of the Department of Education from among individuals who have experience in the education of individuals who are deaf to serve as liaison between the Department and Gallaudet University, the National Technical Institute for the Deaf, and other postsecondary educational programs for the deaf under the Education of the Handicapped Act, the Rehabilitation Act of 1973, and other federal or nonfederal agencies, institutions, or organizations involved with the education or rehabilitation of individuals who are deaf or hard of hearing.

(b) *Duties of liaison.* — The individual serving as liaison for educational programs for individuals who are deaf or hard of hearing shall:

(1) Provide information to institutions regarding the Department’s efforts directly affecting the operation of such programs by such institutions;

(2) Review research and other activities carried out by the University, NTID, and other federal or nonfederal agencies, institutions, or organizations involved with the education or rehabilitation of individuals who are deaf or hard of hearing for the purpose of determining overlap and opportunities for coordination among such entities; and

(3) Provide such support and assistance as such institutions may request and the Secretary considers appropriate.

(c) *Authority of Secretary.* — Nothing in this section may be construed to affect the authority of the Secretary under this chapter or any other act with respect to Gallaudet University or the National Technical Institute for the Deaf. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 206, formerly § 406; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 136, 151(a)(4), (5); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(e).)

References in text. — The “Education of the Handicapped Act,” referred to in subsection (a), is the Act of April 13, 1970, 84 Stat. 188, Pub. L. 91-230, Title VI, § 662(3), which is codified at 20 U.S.C. § 1401 et seq.

The “Rehabilitation Act of 1973,” referred to in subsection (a), is 29 U.S.C. § 701 et seq. (September 26, 1973, 87 Stat. 355, Pub. L. 93-112).

§ 31-1842.7. Gallaudet University Federal Endowment Program.

Repealed. Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 207, formerly § 407; renumbered Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(b)(6); repealed Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 137(1).

§ 31-1842.7a. Federal endowment programs for Gallaudet University and the National Technical Institute for the Deaf.

(a) *Establishment of programs.* — (1) The Secretary and the Board of Trustees of Gallaudet University are authorized to establish the Gallaudet University Federal Endowment Fund as a permanent endowment fund, in accordance with this section, for the purpose of promoting the financial independence of the University. The Secretary and the Board of Trustees may enter into such agreements as may be necessary to carry out the purposes of this section with respect to the University.

(2) The Secretary and the Board of Trustees or other governing body of the institution of higher education with which the Secretary has an agreement under § 31-1841.4b are authorized to establish the National Technical Institute for the Deaf Federal Endowment Fund as a permanent endowment fund, in accordance with this section, for the purpose of promoting the financial independence of NTID. The Secretary and the Board or other governing body may enter into such agreements as may be necessary to carry out the purposes of this section with respect to NTID.

(b) *Federal payments.* — (1) The Secretary shall, consistent with this section, make payments to the Federal endowment funds established under subsection (a) of this section from amounts appropriated under subsection (h) of this section for the fund involved.

(2) Subject to the availability of appropriations and the nonfederal matching requirements of paragraph (3) of this subsection, the Secretary shall make payments to each Federal endowment fund in amounts equal to sums contributed to the fund from nonfederal sources (excluding transfers from other endowment funds of the institution involved).

(3) Effective for fiscal year 1993 and each succeeding fiscal year, for any fiscal year in which the sums contributed to the federal endowment fund of the institution involved from nonfederal sources exceed \$1,000,000, the nonfederal contribution to the federal endowment shall be \$2 for each federal dollar provided in excess of \$1,000,000 (excluding transfers from other endowment funds of the institution involved).

(c) *Investments.*

(1) Except as provided in subsection (e) of this section, the University and NTID, respectively, shall invest its federal endowment fund corpus and income

in instruments and securities offered through one or more cooperative service organizations of operating educational organizations under section 501(f) of the Internal Revenue Code of 1986, or in low-risk instruments and securities in which a regulated insurance company may invest under the laws of the State in which the institution involved is located.

(2) In managing the investment of its federal endowment fund, the University or NTID shall exercise the judgment and care, under the prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of that person's own business affairs.

(3) Neither the University nor NTID may invest its federal endowment fund corpus or income in real estate, or in instruments or securities issued by an organization in which an executive officer, a member of the Board of Trustees of the University or of the host institution, or a member of the advisory group established under § 31-1841.4b is a controlling shareholder, director, or owner within the meaning of federal securities laws and other applicable laws. Neither the University nor NTID may assign, hypothecate, encumber, or create a lien on the federal endowment fund corpus without specific written authorization of the Secretary.

(d) *Withdrawals and expenditures.* — (1) Except as provided in paragraph (3)(B) of this subsection, neither the University nor NTID may withdraw or expend any of the corpus of its federal endowment fund.

(2)(A) The University and NTID, respectively, may withdraw or expend the income of its federal endowment fund only for expenses necessary to the operation of that institution, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research.

(B) Neither the University nor NTID may withdraw or expend the income of its federal endowment fund for any commercial purpose.

(C) Beginning on October 1, 1992, the University and NTID shall maintain records of the income generated from its respective federal endowment fund for the prior fiscal year.

(3)(A) Except as provided in subparagraph (B) of this paragraph, the University and NTID, respectively, may, on an annual basis, withdraw or expend not more than 50 percent of the income generated from its federal endowment fund from the prior fiscal year.

(B) The Secretary may permit the University or NTID to withdraw or expend a portion of its federal endowment fund corpus or more than 50 percent of the income generated from its federal endowment fund from the prior fiscal year if the institution involved demonstrates, to the Secretary's satisfaction, that such withdrawal or expenditure is necessary because of:

(i) A financial emergency, such as a pending insolvency or temporary liquidity problem;

(ii) A life-threatening situation occasioned by natural disaster or arson; or

(iii) Another unusual occurrence or exigent circumstance.

(e) *Investment and expenditure flexibility.* — The corpus associated with a federal payment (and its nonfederal match) made to the federal endowment

fund of the University or NTID shall not be subject to the investment limitations of subsection (c)(1) of this section after 10 fiscal years following the fiscal year in which the funds are matched, and the income generated from such corpus after the tenth fiscal year described in this subsection shall not be subject to such investment limitations or to the withdrawal and expenditure limitations of subsection (d)(3) of this section.

(f) *Recovery of payments.* — After notice and an opportunity for a hearing, the Secretary is authorized to recover any federal payments under this section if the University or NTID:

(1) Makes a withdrawal or expenditure of the corpus or income of its federal endowment fund that is not consistent with this section;

(2) Fails to comply with the investment standards and limitations under this section; or

(3) Fails to account properly to the Secretary concerning the investment of or expenditures from the federal endowment fund corpus or income.

(g) *Definitions.* — As used in this section:

(1) The term “corpus”, with respect to a federal endowment fund under this section, means an amount equal to the federal payments to such fund, amounts contributed to the fund from nonfederal sources, and appreciation from capital gains and reinvestment of income.

(2) The term “federal endowment fund” means a fund, or a tax-exempt foundation, established and maintained pursuant to this section by the University or NTID, as the case may be, for the purpose of generating income for the support of the institution involved.

(3) The term “income”, with respect to a federal endowment fund under this section, means an amount equal to the dividends and interest accruing from investments of the corpus of such fund.

(4) The term “institution involved” means the University or NTID, as the case may be.

(h) *Authorization of appropriations.* — (1) In the case of the University, there are authorized to be appropriated for the purposes of this section such sums as may be necessary for each of the fiscal years 1993 through 1997.

(2) In the case of NTID, there are authorized to be appropriated for the purposes of this section such sums as may be necessary for each of the fiscal years 1993 through 1997.

(3) Amounts appropriated under paragraph (1) or (2) shall remain available until expended.

(i) *Effective date.* — The provisions of this section shall take effect as if included in this act as enacted on August 4, 1986. (Aug. 4, 1986, Pub. L. 99-371, § 207, as added Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 137(2); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(f).)

Section references. — This section is referred to in § 31-1842.4.

References in text. — “Section 501(f) of the Internal Revenue Code of 1986”, referred to in

(c)(1), is codified at 26 U.S.C. § 501(f).

“This act”, referred to in (i), is Pub. L. 99-371, 100 Stat. 1790, August 4, 1986.

§ 31-1842.8. National Technical Institute for the Deaf Endowment Program.

Repealed. Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 208, formerly § 408; renumbered Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(b)(6); repealed Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 137(1).

§ 31-1842.8a. Scholarship program.

(a) *In general.* — The Secretary may make grants to institutions of higher education that have teacher training programs in deaf education or special education for the purpose of providing scholarships to individuals who are deaf for careers in deaf education or special education. Such institutions shall give priority consideration in the selection of qualified recipients of the scholarships to individuals from underrepresented backgrounds, particularly minority individuals who are deaf and who are underrepresented in the teaching profession. Grants may be used by institutions to assist in covering the cost of courses of training or study for such individuals and for establishing and maintaining fellowships or traineeships with stipends and allowances as may be determined by the Secretary.

(b) *Authorization of appropriations.* — For the purpose of making grants under subsection (a), there are authorized to be appropriated \$2,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997. (Aug. 4, 1986, Pub. L. 99-371, § 208, as added Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 138.)

§ 31-1842.9. Oversight and effect of agreements.

(a) *Oversight activities.* — Nothing in this chapter shall be construed to diminish the oversight activities of the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives with respect to any agreement entered into between the Secretary of Education and Gallaudet University, and the institution of higher education with which the Secretary has an agreement under subpart B of subchapter I of this chapter.

(b) *Construction of agreements.* — The agreements described in subsection (a) of this section shall continue in effect, to the extent that such agreements are not inconsistent with this chapter. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 209, formerly § 409; renumbered Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(b)(6); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(g).)

§ 31-1842.10. International students.

(a) *Enrollment.* — Effective with new admissions for academic year 1993-1994 and each succeeding academic year, the University (including preparatory, undergraduate, and graduate students) and NTID shall limit the enrollment of international students to approximately 10 percent of the total postsecondary student population enrolled respectively at the University or NTID.

(b) *Tuition surcharge.* — Effective with new admissions, the tuition for postsecondary international students enrolled in the University (including preparatory, undergraduate, and graduate students) or NTID shall include a surcharge of 75% for the academic year 1993-1994 and 90 percent beginning with the academic year 1994-1995.

(c) *Reduction of surcharge.* — Beginning with the academic year 1993-1994, the University or NTID may reduce the surcharge under subsection (b) of this section to 50% if:

(1) A student described under subsection (b) of this section is from a developing country;

(2) Such student is unable to pay the tuition surcharge under subsection (b) of this section; and

(3) Such student has made a good faith effort to secure aid through such student's government or other sources.

(d) *Definition.* — For purposes of subsection (c), the term "developing country" means a country that has a 1990 per capita income not in excess of \$4,000 in 1990 United States dollars. (Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 139; Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(h); Apr. 9, 1997, D.C. Law 11-255, § 36, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (c)(1).

Legislative history of Law 11-255. — See note to § 31-1841.3a.

§ 31-1842.11. Authorization of appropriations.

(a) *Gallaudet University.* — There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1997 to carry out the provisions of this chapter, relating to:

(1) Gallaudet University;

(2) Kendall Demonstration Elementary School; and

(3) The model secondary school for individuals who are deaf.

(b) *National Technical Institute for the Deaf.* — There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1997 to carry out the provisions of this chapter relating to the National Technical Institute for the Deaf. (Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 211, formerly § 411; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 140, 151(a)(4); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(i).)

Subchapter III. Commission on Education of the Deaf.

§§ 31-1843.1 to 31-1843.4. Commission established; duties of Commission; administrative provisions; compensation of members.

Repealed. Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(2).

CHAPTER 19. LAW SCHOOL CLINICAL PROGRAMS FUNDING.

Sec.

31-1901 to 31-1906. [Repealed].

§§ 31-1901 to 31-1906. Findings; program established; administration of grants; eligibility for funds; prohibited use of funds; appropriation.

Repealed. Mar. 21, 1995, D.C. Law 10-234, § 3, 42 DCR 28.

Legislative history of Law 10-224. — Law 10-224, the “Budget Spending Reduction Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-818. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-361 and transmitted to both Houses of Congress for its review. D.C. Law 10-224 became effective on March 16, 1995.

Legislative history of Law 10-234. — Law

10-234, the “Budget Spending Reduction Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-763, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-377 and transmitted to both Houses of Congress for its review. D.C. Law 10-234 became effective on March 21, 1995.

CHAPTER 20. COMMISSION ON THE ARTS AND HUMANITIES.

Sec.	Sec.
31-2001. Authority of Council.	31-2005. Administration.
31-2002. Definitions.	31-2005.1. Arts and Humanities Enterprise
31-2003. Establishment; composition; terms; vacancies; compensation.	Fund; establishment; accounting; investment.
31-2003.1. Effect of prior official actions.	31-2006. Miscellaneous provisions.
31-2004. Powers.	

§ 31-2001. Authority of Council.

The enactment of this chapter by the Council is done pursuant to the authority vested in the Council under § 1-227(b). (1973 Ed., § 31-1901; Oct. 21, 1975, D.C. Law 1-22, § 2, 22 DCR 2083.)

Legislative history of Law 1-22. — Law 1-22 was introduced in Council and assigned Bill No. 1-25, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings

on May 13, 1975, and May 27, 1975, respectively. Enacted without signature by the Mayor on June 24, 1975, it was assigned Act No. 1-27 and transmitted to both Houses of Congress for its review.

§ 31-2002. Definitions.

As used in this chapter:

(1) The term “Mayor” means the Mayor of the District of Columbia established under § 1-241.

(2) The term “Council” means the Council of the District of Columbia established under § 1-221.

(3) The term “Commission” means the Commission on the Arts and Humanities established by § 31-2003.

(4) The term “arts” includes, but is not limited to, music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, exhibition of those major art forms, and the study and application of the arts to the human environment.

(5) The term “humanities” includes, but is not limited to, the study of the following: language, both modern and classical; linguistics; literature; history; jurisprudence; philosophy; archeology; comparative religion; ethics; the history, criticism, theory, and practice of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to the relevance of the humanities to the current conditions of national life.

(6) The term “public art” means sculptures, murals, mosaics, bas-reliefs, frescoes, tapestries, monuments, fountains, environmental designs, and other visual art forms that are intended to enhance the aesthetic quality of a public building, park, street, or sidewalk or other public place with which they are physically or spatially connected. The term “public art” shall not include

landscape design or the incidental ornamentation of functional structural elements or accessories unless designed by a visual artist as part of an artwork design authorized by the Commission.

(7) The term "Fund" means the Arts and Humanities Enterprise Fund established by § 31-2005.1. (1973 Ed., § 31-1902; Oct. 21, 1975, D.C. Law 1-22, § 3, 22 DCR 2083; June 25, 1986, D.C. Law 6-125, § 2(a), 33 DCR 2945; Jan. 31, 1998, D.C. Law 12-42, § 2(a), 44 DCR 5577.)

Effect of amendments. — D.C. Law 12-42 added (7).

Legislative history of Law 1-22. — See note to § 31-2001.

Legislative history of Law 6-125. — Law 6-125 was introduced in Council and assigned Bill No. 6-143, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 25, 1986, and April 15, 1986, respectively. Signed by the Mayor on May 2, 1986, it was assigned Act No. 6-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-42. — Law 12-42, the "Arts and Humanities Enterprise Fund Establishment Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-13, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 3, 1997, and June 17, 1997, respectively. Signed by the Mayor on July 3, 1997, it was assigned Act No. 12-106 and transmitted to both Houses of Congress for its review. D.C. Law 12-42 became effective on January 31, 1998.

§ 31-2003. Establishment; composition; terms; vacancies; compensation.

(a) In order to evaluate and initiate action on matters relating to the arts, to encourage programs and the development of programs which promote progress in the arts, there is established, in the Office of the Mayor, in the District of Columbia, a commission to be known as the Commission on the Arts and Humanities. The Commission shall consist of 18 members appointed by the Mayor, with the advice and consent of the Council. Each member appointed to the Commission shall be a person who has displayed an interest or an ability in 1 of the various fields of the arts or humanities and/or has been active in the furtherance of the arts or humanities in the District of Columbia. Members shall be appointed to ensure that they are representative of all the various geographic areas and neighborhoods within the District of Columbia.

(b) Members of the Commission shall serve terms not to exceed 3 years, which shall regularly commence on July 1st in the year of appointment and expire on June 30th 3 years later. All terms shall be staggered so that 6 terms expire each year on June 30th beginning in 1982. Members may be reappointed but may not serve more than 2 consecutive terms.

(c) Should a vacancy occur, a successor shall be appointed by the Mayor within 30 days, with the advice and consent of the Council to serve until the end of the term of the member whom that successor succeeds. Failing to receive the nomination within the 30 days, the Council shall appoint a person to fill the vacancy. Members of the Commission on the Arts and Humanities established under Organization Order No. 74-4 of January 7, 1974, issued by the Commissioner of the District of Columbia, shall continue to serve until the members of the Commission established under this chapter are appointed and qualify. The Mayor shall nominate members to the new Commission within 30 days of October 21, 1975.

(d) The Mayor shall nominate the Chairperson for the Commission.

(e) Members of the Commission shall serve without compensation, but shall be entitled to receive, in accordance with applicable District of Columbia regulations, reimbursement for expenses incurred while actually performing duties vested in the Commission. (1973 Ed., § 31-1903; Oct. 21, 1975, D.C. Law 1-22, § 4, 22 DCR 2084; Mar. 10, 1982, D.C. Law 4-73, § 4(a), 28 DCR 5276.)

Section references. — This section is referred to in §§ 1-1462 and 31-2002.

Legislative history of Law 1-22. — See note to § 31-2001.

Legislative history of Law 4-73. — Law 4-73 was introduced in Council and assigned Bill No. 4-318, which was referred to the Com-

mittee on Finance and Revenue. The Bill was adopted on first and second readings on October 27, 1981 and November 10, 1981, respectively. Signed by the Mayor on December 2, 1981, it was assigned Act No. 4-120 and transmitted to both Houses of Congress for its review.

§ 31-2003.1. Effect of prior official actions.

All official actions of the Commission on the Arts and Humanities taken by members appointed prior to March 10, 1982, are considered to be taken by a properly constituted Commission, regardless of the date of appointment and length of terms of its members. (Mar. 10, 1982, D.C. Law 4-73, § 4(b), 28 DCR 5276.)

Legislative history of Law 4-73. — See note to § 31-2003.

§ 31-2004. Powers.

The Commission shall:

(1) Take action concerning the needs of the residents of the District of Columbia for activities in the arts and humanities, and concerning the development and improvement of activities in the arts and humanities in the District of Columbia;

(2) Prepare an annual plan of artistic projects and productions in the District of Columbia meeting the requirements of §§ 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1965, and act as the designated state agency for the District of Columbia, as referred to in § 5(g)(2)(A) of the National Foundation on Arts and Humanities Act of 1965, as amended;

(3) Make grants to individuals and groups of individuals for projects and productions in the arts and humanities;

(4) Cooperate and be empowered to contract with governmental departments and agencies, private organizations, consultants, and residents of the District of Columbia to develop and undertake programs which will encourage maximum participation in activities in the arts and humanities and promote greater appreciation and enjoyment of the arts and humanities;

(5)(A) Accept donations, gifts by devise or bequest, grants, and any other type of asset from individuals, clubs, groups, corporations, partnerships, and other governmental entities;

(B) Manage any property or funds in accordance with the provisions or conditions of any donations, gifts, grants, or other transfers including the investment of the principal of such property and funds; and

(C) Deposit all funds raised pursuant to this subsection in the Fund.

(6) Be empowered to appoint advisory panels in the various fields of the arts and humanities, as the Commission may deem necessary, the members of which shall serve without compensation;

(7) Adopt and modify bylaws and be empowered to adopt regulations as authorized by law; and

(8)(A) Develop and annually update, after holding a public hearing, a public arts plan that establishes priorities for the selection and location of public art for the upcoming fiscal year; and

(B) Prepare an annual report at the end of each fiscal year on the implementation of that year's public arts plan. (1973, Ed., § 31-1904; Oct. 21, 1975, D.C. Law 1-22, § 5, 22 DCR 2086; June 25, 1986, D.C. Law 6-125, § 2(b)-(d), 33 DCR 2945; Jan. 31, 1998, D.C. Law 12-42, § 2(b), 44 DCR 5577.)

Section references. — This section is referred to in § 31-2005.

Effect of amendments. — D.C. Law 12-42 rewrote (5).

Legislative history of Law 1-22. — See note to § 31-2001.

Legislative history of Law 6-125. — See note to § 31-2002.

Legislative history of Law 12-42. — See note to § 31-2002.

References in text. — “Sections 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1965,” referred to in paragraph (2) of this section, is codified at 20 U.S.C. §§ 954(c) and (g).

“Section 5(g)(2)(A) of the National Foundation on Arts and Humanities Act of 1965, as amended,” referred to in paragraph (2) of this section, is codified at 20 U.S.C. § 954(g)(2)(A).

§ 31-2005. Administration.

(a) There shall be an Executive Director for the Commission who shall be appointed by the Commission. The Executive Director shall be the chief administrative officer of the Commission and shall be responsible for supervising the remainder of the staff of the Commission. He shall report regularly to the Commission on his activities. The Executive Director shall receive annual compensation fixed in accordance with the provisions of subchapter XII of Chapter 6 of Title 1.

(b) The Commission shall meet monthly, except when a meeting is cancelled by the Chairperson and a majority of the Commission. Special meetings of the Commission may be called by the Mayor, Council, Chairperson of the Commission, or upon the request of 5 members of the Commission.

(c) The Commission shall prepare and submit to the Mayor an annual budget to be included in the regular budget process of the District of Columbia developed in accordance with subchapter I of Chapter 3 of Title 47. In addition, each annual capital budget request submitted by the Mayor to the Council shall include as a discrete capital project a public arts fund in the amount of 1% of the total authority requested for the construction, renovation, and repair of public facilities and institutions, exclusive of land acquisition and infrastructure. Public arts fund financing shall be used by the Commission to fund the creation, installation, and maintenance of public art. The commissioning of

artists and the selection, approval, placement, and maintenance of public art shall be the responsibility of the Commission in consultation with both the Department of Public Works and, if applicable, the public official or employee with chief administrative responsibility for the actual use of the public place affected.

(d) The Chairperson shall submit to the Mayor and the Council the annual reports of the Commission's activities, the public arts plan required by § 31-2004(8), and any other plans, recommendations, and projections for the following year. These reports, plans, recommendations, and projections shall accompany the budget request referred to in subsection (c) of this section. (1973 Ed., § 31-1905; Oct. 21, 1975, D.C. Law 1-22, § 6, 22 DCR 2087; Mar. 3, 1979, D.C. Law 2-139, § 3205(s), 25 DCR 5740; June 25, 1986, D.C. Law 6-125, § 2(e)-(f), 33 DCR 2945.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 1-22. — See note to § 31-2001.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-125. — See note to § 31-2002.

2-139. — As to effective date of D.C. Law 2-139, see § 1-637.1.

§ 31-2005.1. Arts and Humanities Enterprise Fund; establishment; accounting; investment.

(a) There is established the Arts and Humanities Enterprise Fund ("Fund") to be operated by the Commission.

(b) The monies in the Fund shall not be a part of, nor lapse into, the General Fund of the District or any other fund of the District.

(c) By October 1st of each year, the Commission shall publish in the District of Columbia Register and in a report submitted to the Council, a specific accounting of how monies in the Fund were expended and any remaining balance. The accounting shall include the following:

- (1) The name of any donors or anonymous contributions;
- (2) The amounts of each contribution;
- (3) A description of any donated property; and

(4) Identification of the programs or recreation centers where the funds have been expended.

(d) Proceeds in the Fund may be expended for the administration, improvement, and maintenance of property and programs managed by the Commission.

(e) Proceeds in the Fund may be invested in a prudent and reasonable manner consistent with applicable District government policies and procedures. (Oct. 21, 1975, D.C. Law 1-22, § 6a, as added Jan. 31, 1998, D.C. Law 12-42, § 2(c), 44 DCR 5577.)

Effect of amendments. — D.C. Law 12-42 added this section.

Legislative history of Law 12-42. — See note to § 31-2002.

§ 31-2006. Miscellaneous provisions.

(a) The Mayor shall instruct the Office of Management and Budget Systems to coordinate with the Commission the establishment of a bookkeeping and accounting system to allow for swift transference of grant monies from the District government to a recipient, and shall instruct that Office, in concert with the Commission, to establish a voucher system which would also allow for the swift transference of funds from the District government to grant recipients.

(b) Nominees for the Commission shall be residents of the District of Columbia.

(c) The Commission shall establish procedures in its bylaws to handle conflicts of interest in the awarding of grants, when any commissioner has either a structural or fiduciary relationship with a grantee. (1973 Ed., § 31-1906; Oct. 21, 1975, D.C. Law 1-22, § 7, 22 DCR 2088.)

Legislative history of Law 1-22. — See note to § 31-2001.

CHAPTER 21. MUSEUM OF THE CITY OF WASHINGTON.

Sec.

31-2101. Established; designation as official cultural institution; duties.

31-2102. Service of process.

31-2103. Corporate powers.

31-2104. Board of Directors — Established; composition; term of office; non-voting ex officio members.

Sec.

31-2105. Same — Powers and responsibilities.

31-2106. Cooperation of District government.

31-2107. Dissolution.

31-2108. Tax status.

31-2109. Retention of Council's authority.

§ 31-2101. Established; designation as official cultural institution; duties.

(a) There is established in the District of Columbia a membership nonprofit corporation which shall be known as the Museum of the City of Washington, Incorporated (hereinafter the "Museum").

(b) The Museum is designated as the official cultural institution in the District of Columbia for preserving the record of local achievement, history, culture, and scholarship in history and the arts of the District of Columbia.

(c) The Museum shall:

(1) Collect, preserve, and exhibit those historical artifacts, archival material, and works of art relating to the heritage of the citizenry of the District of Columbia; and

(2) Develop educational programs to enhance public understanding and appreciation of the District of Columbia. (July 26, 1980, D.C. Law 3-79, § 2, 27 DCR 2546.)

Legislative history of Law 3-79. — Law 3-79 was introduced in Council and assigned Bill No. 3-23, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April

22, 1980, and May 23, 1980, respectively. Signed by the Mayor on May 23, 1980, it was assigned Act No. 3-190 and transmitted to both Houses of Congress for its review.

§ 31-2102. Service of process.

The Museum shall maintain a designated agent to accept service of process for the Museum. Notice to or service upon the agent is notice or service upon the Museum. (July 26, 1980, D.C. Law 3-79, § 3, 27 DCR 2546.)

Legislative history of Law 3-79. — See note to § 31-2101.

§ 31-2103. Corporate powers.

The Museum may exercise those powers conferred upon a nonprofit corporation in Chapter 5 of Title 29. (July 26, 1980, D.C. Law 3-79, § 4, 27 DCR 2546.)

Legislative history of Law 3-79. — See note to § 31-2101.

§ 31-2104. Board of Directors — Established; composition; term of office; nonvoting ex officio members.

(a) A self-perpetuating Board of Directors is established to manage the affairs of the Museum. The Board shall have a minimum of 10 and a maximum of 23 members. Members of the Board shall include representatives of various geographical areas of the City, business people, and community leaders known for their interest in the arts, culture, and humanities.

(b) Each member of the initial Board, as established by this chapter, shall serve a term of 1 year. A successor Board shall be established according to the requirements of this chapter and those bylaws adopted by the initial Board. Each member of a successor Board shall serve a 3-year term.

(c) The initial Board shall have a minimum of 10 members and shall be composed at a minimum of the following individuals:

- (1) Ms. Leslie Buhler;
- (2) Ms. Charlotte Chapman;
- (3) Ms. Marcia Greenlee;
- (4) Mr. Earl James;
- (5) Mr. Leroi Johnson;
- (6) Mr. Tom Lodge;
- (7) Ms. Betty Monkman;
- (8) Mr. Harris Snettel;
- (9) Dr. Frank Taylor; and
- (10) Dr. James Walker.

(d) The initial Board shall appoint such additional or replacement members up to a maximum of 23 individuals, so that the initial Board meets the representational requirements of subsection (a) of this section. The members shall be appointed according to the bylaws adopted by the Board members listed in subsection (c) of this section.

(e) The following individuals shall be nonvoting ex officio members of the initial Board:

- (1) Dr. John Kinard, Anacostia Neighborhood Museum;
- (2) Dr. Phillip Ogilvie, D.C. Foundation for Creative Space;
- (3) Mr. William H. Press, Columbia Historical Society;
- (4) Mr. Fred Schwengel, J.S. Capitol Historical Society;
- (5) Dr. Michael R. Winston, Moorland-Spingarn Research Center and Museum;
- (6) Mr. Don Wolpe, Jewish Historical Society;
- (7) Martin Luther King Library representative;
- (8) Ms. Marion Dockery, Cultural Alliance of Greater Washington; and
- (9) Ms. Cathy Smith, D.C. Public Schools. (July 26, 1980, D.C. Law 3-79, § 5, 27 DCR 2546.)

Legislative history of Law 3-79. — See note to § 31-2101.

§ 31-2105. Same — Powers and responsibilities.

(a) The Board shall file such papers as may be required by the Recorder of Deeds of the District of Columbia.

(b) The Board may appoint such officers and employees as necessary to carry out the purposes of the Museum.

(c) The Board shall have the power to adopt, amend, or repeal bylaws for operation of the Museum.

(d) The Board may establish advisory committees to advise the Board and the officers of the Museum.

(e) In carrying out the purposes of this chapter, the Board shall encourage community participation from all areas of the City in the planning, development, and promotion of the Museum.

(f) The Board may appoint ex officio members of the Board.

(g) A member of the Board may be removed from office by a two-thirds vote of the remaining members of the Board. (July 26, 1980, D.C. Law 3-79, § 6, 27 DCR 2546.)

Legislative history of Law 3-79. — See note to § 31-2101.

§ 31-2106. Cooperation of District government.

(a) The District of Columbia government may assist the Museum in carrying out this chapter by transferring or loaning to the Museum any District-owned real or personal property, facilities, furnishings, works of art, or historical artifacts. If the District of Columbia government transfers or loans any property to the Museum, the Museum may not transfer that property to any other person or entity without the express approval of the District government.

(b) The District of Columbia government may appropriate funds or loan personnel to the Museum on a permanent or temporary basis to assist the Museum in carrying out the purposes of this chapter. (July 26, 1980, D.C. Law 3-79, § 7, 27 DCR 2546.)

Legislative history of Law 3-79. — See note to § 31-2101.

§ 31-2107. Dissolution.

Except as otherwise provided in a contract or legacy transferring or loaning property to the Museum, upon dissolution of the Museum as a corporation, all remaining assets shall be transferred to the Mayor of the District of Columbia. The Mayor shall make every effort to use the assets for the Museum and public education purposes as provided in this chapter. (July 26, 1980, D.C. Law 3-79, § 8, 27 DCR 2546.)

Legislative history of Law 3-79. — See note to § 31-2101.

§ 31-2108. **Tax status.**

The Museum may engage in such activities that make it eligible for treatment as an organization described in § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.) which may be exempt from federal taxation under § 501(a) of the Internal Revenue Code (26 U.S.C.). (July 26, 1980, D.C. Law 3-79, § 9, 27 DCR 2546; May 10, 1989, D.C. Law 7-231, § 37, 36 DCR 492.)

Legislative history of Law 3-79. — See note to § 31-2101.

Legislative history of Law 7-231. — See note to § 31-1002.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 31-2109. **Retention of Council's authority.**

The Council of the District of Columbia retains the full right to repeal or amend this chapter at any time. (July 26, 1980, D.C. Law 3-79, § 10, 27 DCR 2546.)

Legislative history of Law 3-79. — See note to § 31-2101.

CHAPTER 22. MISCELLANEOUS PROVISIONS.

Sec.

- 31-2201. Whole school-day sessions.
 31-2202. School officials not to profit on supplies or textbooks purchased for schools.
 31-2203. Repair work by janitors.
 31-2204. School name changes.
 31-2205. John A. Chamberlain Vocational School.
 31-2206. Title and jurisdiction over reservation 277-F transferred for school purposes; authority to close streets and alleys.
 31-2207. Acceptance by Board of Education of donations.
 31-2208. Bond not required for supplies issued by Department of the Army.
 31-2209. Insurance for arms issued to high school cadets.
 31-2210. Solicitation of donations from pupils.

Sec.

- 31-2211. Restriction on use of appropriations.
 31-2212. Driver education program; police officer and firefighter cadet programs.
 31-2212.1. Issuance of rules for programs established pursuant to § 31-2212.
 31-2213. Subsistence and transportation of handicapped children.
 31-2214. Ceremonial expenses.
 31-2215. Official expenses.
 31-2216. Funding of public schools — Declaration of policy.
 31-2217. Same — Public hearings.
 31-2218. Written procedures for evaluating facilities needs.
 31-2219. Community input and demographic analysis in annual capital request.

§ 31-2201. Whole school-day sessions.

All children of school age being instructed in the schools of the District beyond the 2nd grade shall be given a whole school-day session. (June 20, 1906, 34 Stat. 316, ch. 3446, § 1; 1973 Ed., § 31-1101.)

§ 31-2202. School officials not to profit on supplies or textbooks purchased for schools.

No school official, teacher, or member of the Board of Education shall receive any pecuniary benefit on account of school supplies or textbooks purchased for the use of the public schools in the District of Columbia. (Aug. 7, 1894, 28 Stat. 254, ch. 232; 1973 Ed., § 31-1104.)

Cross references. — As to purchase of school books and supplies, see § 31-701 et seq.

§ 31-2203. Repair work by janitors.

The janitors of the principal school buildings, in addition to their other duties, shall do all minor repairs to buildings and furniture, glazing, fixing seats and desks, and take care of the heating apparatus, and shall be selected with reference to their qualifications to perform this work. (Feb. 25, 1885, 23 Stat. 318, ch. 145; 1973 Ed., § 31-1105.)

Cross references. — As to control of construction and repair of school buildings, see § 31-202.

§ 31-2204. School name changes.

(a) The school formerly known as the M Street High School (old) shall be known as Robert Gould Shaw Junior High School.

(b) The school formerly known as Central High School (old) and annex shall be known as Columbia Junior High School. (June 29, 1922, 42 Stat. 689, ch. 249; 1973 Ed., § 31-1106.)

§ 31-2205. John A. Chamberlain Vocational School.

The new school building built to replace the Lenox Vocational School shall, when occupied, be known as the John A. Chamberlain Vocational School. (July 15, 1939, 53 Stat. 1016, ch. 281, § 1; 1973 Ed., § 31-1107.)

§ 31-2206. Title and jurisdiction over reservation 277-F transferred for school purposes; authority to close streets and alleys.

Title to and jurisdiction over reservation 277-F, being part of square 3526, are transferred to the District of Columbia, the said reservation to be included in the site acquired or to be acquired for the McKinley Technical High School; and the Council of the District of Columbia is hereby authorized and directed to close all streets and alleys in the area acquired or to be acquired for the McKinley Technical High School and the Langley Junior High School buildings and grounds, where title to the property on both sides of any such streets or alleys shall be in the District of Columbia, the title to the land in such streets or alleys so closed to revert to the District of Columbia for school purposes. (Mar. 4, 1925, 43 Stat. 1320, ch. 556; 1973 Ed., § 31-1108.)

§ 31-2207. Acceptance by Board of Education of donations.

The Board of Education is authorized to receive any donations or contributions that may be made for the benefit of the public schools of the District of Columbia, and to apply the same in such manner as in their opinion shall be best calculated to effect the object of the donors; the Board of Education to account for all funds so received. (R.S., D.C., § 283; June 20, 1906, 34 Stat. 316, ch. 3446, § 2; 1973 Ed., § 31-1109; Oct. 30, 1975, D.C. Law 1-26, § 3, 22 DCR 2467.)

Legislative history of Law 1-26. — Law 1-26 was introduced in Council and assigned Bill No. 1-52, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first

and second readings on July 1, 1975, and July 15, 1975, respectively. Signed by the Mayor on August 4, 1975, it was assigned Act No. 1-38 and transmitted to both Houses of Congress for its review.

§ 31-2208. Bond not required for supplies issued by Department of the Army.

On and after July 1, 1943, a bond shall not be required on account of military supplies or equipment issued by the Department of the Army for military instruction and practice by the students of high schools in the District of Columbia. (July 15, 1939, 53 Stat. 1015, ch. 281, § 1; June 12, 1940, 54 Stat. 317, ch. 333, § 1; 1973 Ed., § 31-1115; July 1, 1943, ch. 184, § 1.)

§ 31-2209. Insurance for arms issued to high school cadets.

Arms authorized to be issued by the Department of the Army to high school cadets of the District of Columbia shall hereafter be issued without requiring that the same shall be insured from loss by fire. (April 27, 1904, 33 Stat. 379, ch. 1628; 1973 Ed., § 31-1116.)

§ 31-2210. Solicitation of donations from pupils.

No part of any appropriation for the District of Columbia shall be paid to any person employed under or in connection with the public schools of the District of Columbia who shall solicit or receive, or permit to be solicited or received, on any public school premises, any subscription or donation of money or other thing of value from any pupil enrolled in such public schools for presentation of testimonials to school officials or for any purpose except such as may be authorized by the Board of Education at a stated meeting upon the written recommendation of the Superintendent of Schools. (July 1, 1943, 57 Stat. 324, ch. 184, § 1; 1973 Ed., § 31-1117.)

§ 31-2211. Restriction on use of appropriations.

No funds appropriated for the government of the District of Columbia may be used:

(1) To provide transportation for students enrolled in the public schools of the District of Columbia if the transportation is provided solely to change the racial balance in any public school in the District of Columbia; or

(2) For the cost of education (including the cost of transportation) of any individual in an elementary or secondary school located outside the District of Columbia, except:

(A) Any handicapped individual for whom education facilities do not exist in the public school system of the District of Columbia; and

(B) Any individual under the care, custody, or guardianship of the District of Columbia placed in a foster home or in an institution located outside the District of Columbia. (Aug. 2, 1968, 82 Stat. 615, Pub. L. 90-450, title IV, § 401; 1973 Ed., § 31-1118.)

Section not invalid on ground that purpose is to impede racial segregation. Bulluck v. Washington, 468 F.2d 1096 (D.C. Cir. 1972).

School integration program with adjacent states not required by section. — The fact that Congress authorizes the District of Columbia to educate some handicapped and

foster children outside the District does not require that Congress authorize a program of general or limited racial integration between schools of the District and schools of adjacent states. Bulluck v. Washington, 468 F.2d 1096 (D.C. Cir. 1972).

Cited in Bulluck v. Washington, 452 F.2d 1385 (D.C. Cir. 1971).

§ 31-2212. Driver education program; police officer and firefighter cadet programs.

(a) The Board of Education is authorized, within the limits of appropriations therefor, to accept, on a loan basis, and to maintain and provide for insurance of motor vehicles, for use in the driver education programs of the public schools.

(b) There may be appropriated the funds necessary for the administration of comprehensive programs, established in consultation with the Chief of the Metropolitan Police Department and the Chief of the District of Columbia Fire Department, to train and educate students in the public schools to become police officers or firefighter cadets, which funds shall be available for transfer to the Board of Education at the request of the Board, should the Board determine that it will conduct these programs in the public schools.

(c) A student who is a resident of the District of Columbia and who successfully completes a curriculum established pursuant to this section shall be accorded a preference rating which shall be taken into consideration if the student applies for appointment to either the Metropolitan Police Department cadet program or the District of Columbia Fire Department cadet program. (1973 Ed., § 31-1119; Oct. 26, 1973, 87 Stat. 508, Pub. L. 93-140, § 20; Mar. 9, 1983, D.C. Law 4-172, § 3, 29 DCR 5745.)

Section references. — This section is referred to in § 31-2212.1.

Legislative history of Law 4-172. — Law 4-172, "Police Officer and Firefighter Cadet Program Funding Authorization and Human Rights Act of 1977 Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-421, which was referred to the Committee

on the Judiciary and the Committee on Education. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-254 and transmitted to both Houses of Congress for its review.

§ 31-2212.1. Issuance of rules for programs established pursuant to § 31-2212.

The Board of Education may issue rules necessary for the implementation and operation of programs of education and training as may be established by the Board pursuant to § 31-2212. (Mar. 9, 1983, D.C. Law 4-172, § 5, 29 DCR 5745.)

Legislative history of Law 4-172. — See note to § 31-2212.

§ 31-2213. Subsistence and transportation of handicapped children.

The Board of Education is authorized to provide for the furnishing of subsistence supplies and transportation for severely handicapped children attending special education schools or classes established for their benefit in the public school system of the District of Columbia. (1973 Ed., § 31-1120; Oct. 26, 1973, 87 Stat. 508, Pub. L. 93-140, § 21.)

§ 31-2214. Ceremonial expenses.

The President of the Federal City College, the President of the Washington Technical Institute, the President of the District of Columbia Teachers College, and the Superintendent of Schools are hereby authorized to utilize moneys appropriated for the purposes of this section for such expenses as they may respectively deem necessary to conduct such official ceremonial, and graduation activities as are normally associated with the programs of educational institutions. (1973 Ed., § 31-1121; Oct. 26, 1973, 87 Stat. 508, Pub. L. 93-140, § 24.)

§ 31-2215. Official expenses.

The Mayor of the District of Columbia, the Chairman and members of the Council of the District of Columbia, the Chief Judge of the District of Columbia Court of Appeals, the Chief Judge of the Superior Court of the District of Columbia, the Executive Officer of the District of Columbia Court System, the Superintendent of Schools, the City Administrator, the Director of the District of Columbia Public Library, and the Chief Executive Officer of the University of the District of Columbia are authorized to provide for the expenditure, within the limits of specified annual appropriation, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (1973 Ed., § 31-1122; Oct. 26, 1973, 87 Stat. 509, Pub. L. 93-140, § 26; Sept. 23, 1978, D.C. Law 2-111, § 2, 25 DCR 1462; Oct. 24, 1981, D.C. Law 4-46, § 2, 28 DCR 4271; Jan. 26, 1982, D.C. Law 4-61, § 7, 28 DCR 4771.)

Legislative history of Law 2-111. — Law 2-111 was introduced in Council and assigned Bill No. 2-334, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-46. — Law 4-46 was introduced in Council and assigned Bill No. 4-202, which was referred to the Committee on Human Services. The Bill was

adopted on first, first amended and second readings on June 16, 1981, June 30, 1981 and July 14, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-81 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-61. — Law 4-61 was introduced in Council and assigned Bill No. 4-264, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 15, 1981 and September 29, 1981, respectively. Signed by the

Mayor on October 30, 1981, it was assigned Act No. 4-107 and transmitted to both Houses of Congress for its review.

§ 31-2216. Funding of public schools — Declaration of policy.

In recognition of:

(1) The critical importance of high quality public education for all students in the District of Columbia;

(2) The need in District of Columbia public schools for smaller classes and supplemental instructional resources to address the needs of the many students requiring special attention;

(3) The need to attract and retain highly qualified teachers and principals;

(4) The need for District of Columbia public school graduates to possess educational skills that render them competitive with graduates of suburban schools as regards employment and higher education;

(5) The need to restore and repair school facilities throughout the District of Columbia; and

(6) The fact that in recent years the budget for the District of Columbia public schools has increased at a rate substantially below that of almost all other District of Columbia agencies:

IT IS HEREBY DECLARED, that funding of the public schools be acknowledged as of the highest priority by the District of Columbia. This priority status for public education funding will be given due consideration by the District of Columbia Board of Education, the Council of the District of Columbia and the Mayor of the District of Columbia in all future proposals, recommendations, and legislative enactments affecting financial support of the public schools. (Feb. 17, 1988, D.C. Law 7-68, § 2, 34 DCR 7737.)

Legislative history of Law 7-68. — Law 7-68, "District of Columbia Public School Support Initiative of 1986," was submitted to the electors of the District of Columbia on November 3, 1987, as Initiative No. 25. The results of the voting, certified by the Board of Elections

and Ethics on November 17, 1987, were 54,729 for the Initiative and 16,223 against the Initiative. It was assigned Act No. 7-102 after certification and was transmitted to both Houses of Congress for its review on November 23, 1987.

§ 31-2217. Same — Public hearings.

In furtherance of this declared policy and in order to afford the people of the District of Columbia a full opportunity to express their views on the fiscal needs of the public schools, the following public hearings and transmissions of hearing records are required:

(1) Within a period of not more than 90 or less than 45 days prior to the annual submission by the District of Columbia Board of Education of a proposed budget to the Mayor of the District of Columbia, and upon 15 days public notice, the Board of Education shall conduct a public hearing for the purpose of soliciting the views of the public on programs and levels of public funding to be sought for the public schools. The budget proposed by the Board of Education shall, consistent with the public policy declared in this measure,

give due consideration to the record established by the testimony and exhibits on the subjects listed in paragraph (4) of this section. The Board of Education shall transmit the record of this hearing to the Mayor of the District of Columbia and to the Council of the District of Columbia at or before the hearings held by them pursuant to paragraphs (2) and (3) of this section.

(2) Within a period of not more than 60 days or less than 30 days prior to the Mayor's annual submission of a budget recommendation with respect to the public schools to the Council of the District of Columbia, and upon 15 days public notice, the Mayor of the District of Columbia shall conduct a public hearing for the purpose of soliciting the views of the public on levels of public funding to be sought for the public schools. In no event shall this hearing be prior to the annual submission by the District of Columbia Board of Education of its proposed budget to the Mayor. The public schools budget recommendation submitted by the Mayor to the Council of the District of Columbia shall, consistent with the public policy declared in this measure, give due consideration to the record established by the testimony and exhibits on the subjects listed in paragraph (4) of this section. The Mayor shall transmit the record of this hearing to the Council of the District of Columbia at or before the hearing held pursuant to paragraph (3) of this section.

(3) At the public hearings required by § 47-304, the Council of the District of Columbia, not more than 30 days or less than 15 days before the adoption of the Budget Request Act, shall solicit testimony and exhibits on the subjects listed at paragraph (4) of this section, and consistent with the public policy declared in this measure shall adopt a budget giving due consideration to the record established by the testimony and exhibits on those subjects.

(4) The hearings required by paragraphs (1), (2) and (3) of this section shall solicit and receive testimony and exhibits on the following subjects:

(A) The current and prospective educational needs of pupils in the District of Columbia public schools, educational programs that can address these needs and support systems needed for safety and efficiency;

(B) The relative levels of support provided in recent years and sought in the current budget requests for the District of Columbia public schools and other agencies of the District of Columbia Government. Particular attention will be placed on the levels of funding provided in the past and sought for agencies such as the Department of Corrections and the Department of Human Services, which must address the problems resulting in part from an educational system that lacks sufficient resources to address fully the needs of all of its students;

(C) The programs and levels of funding supported by the findings of relevant professional studies and commissions; and

(D) The levels of funding for public school systems in surrounding jurisdictions that have reputations for providing high quality education to their students. (Feb. 17, 1988, D.C. Law 7-68, § 3, 34 DCR 7737.)

Legislative history of Law 7-68. — See note to § 31-2216.

§ 31-2218. Written procedures for evaluating facilities needs.

The District of Columbia Public Schools shall develop and submit for Council approval by November 1, 1997, written procedures outlining an ongoing process for evaluating facilities needs, to include:

- (1) Annual community input and deliberations; and
- (2) Annual demographic projections based on census, economic development (which shall include housing starts), and other factors. (Mar. 20, 1998, D.C. Law 12-60, § 1301, 44 DCR 7378.)

Temporary addition of section. — Section 1301 of D.C. Law 12-59 added § 31-2218.

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary addition of section, see § 1301 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 1301 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 12-59. — Law 12-59, the “Fiscal Year 1998 Revised Budget Support Temporary Act of 1997,” was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second read-

ings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 31-2219. Community input and demographic analysis in annual capital request.

The District of Columbia Public Schools shall submit annually with its capital request a report that details how the capital request reflects the required community input and demographic analysis. (Mar. 20, 1998, D.C. Law 12-60, § 1302, 44 DCR 7378.)

Temporary addition of section. — Section 1302 of D.C. Law 12-59 added § 31-2219.

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary addition of section, see § 1302 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 1302 of the

Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 12-59. — See note to § 31-2218.

Legislative history of Law 12-60. — See note to § 31-2218.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

CHAPTER 23. COMPACT FOR EDUCATION OF THE EDUCATION COMMISSION OF THE STATES.

Sec.

31-2301. Adopted; District membership in Commission approved.

31-2302. Compact provisions.

Sec.

31-2303. Commission members from District.

31-2304. Commission bylaws to be filed with Mayor.

§ 31-2301. Adopted; District membership in Commission approved.

The District of Columbia adopts the Compact for Education of the Education Commission of the States ("Compact") and becomes a member of the Education Commission of the States ("Commission"). (Mar. 14, 1984, D.C. Law 5-65, § 2, 31 DCR 198.)

Legislative history of Law 5-65. — Law 5-65, "Education Commission of the States Participation Act of 1983," was introduced in Council and assigned Bill No. 5-270, which was referred to the Committee on Education. The Bill was adopted on first and second readings on December 20, 1983, and January 3, 1984, respectively. Signed by the Mayor on January

11, 1984, it was assigned Act No. 5-98 and transmitted to both Houses of Congress for its review.

Short title. — The first section of D.C. Law 5-65 provided: "That this act may be cited as 'Education Commission of the States Participation Act of 1983'."

§ 31-2302. Compact provisions.

Except as provided in § 31-2303, the Compact is entered into and enacted into law as follows:

Article I. Purpose and Policy.

(a) It is the purpose of this compact to:

(1) Establish and maintain close cooperation and understanding among executive, legislative, professional education and lay leadership on a nationwide basis at the State and local levels.

(2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

(3) Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the Nation, so that the executive and legislative branches of State Government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

(4) Facilitate the improvement of State and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

(b) It is the policy of this compact to encourage and promote local and State initiative in the development, maintenance, improvement and administration

of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and States.

(c) The party States recognize that each of them has an interest in the quality and quantity of education furnished in each of the other States, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the Nation, and because the products and services contributing to the health, welfare and economic advancement of each State are supplied in significant part by persons educated in other States.

Article II. State Defined.

As used in this Compact, "State" means a State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

(a) The Education Commission of the States, hereinafter called "the Commission", is hereby established: The Commission shall consist of seven members representing each party State. One of such members shall be the Governor; two shall be members of the State legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. If the laws of the State prevent legislators from serving on the Commission, six members shall be appointed and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. In addition to any other principles or requirements which a State may establish for the appointment and service of its members of the Commission, the guiding principle for the composition of the membership on the Commission from each party State shall be that the members representing such State shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the State Government, higher education, the State education system, local education, lay and professional, public and non-public educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the Governor, having responsibility for one or more programs of public education. In addition to the members of the Commission representing the party States, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(b) The members of the Commission shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the Commissioners are present. The Commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Commission may delegate the

exercise of any of its powers to the steering committee or the Executive Director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III(j).

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, who shall be called Governor, a vice chairman and a treasurer. The Commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the Commission, and together with the treasurer and such other personnel as the Commission may deem appropriate shall be bonded in such amount as the Commission shall determine. The executive director shall be secretary.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party States, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Commission, and shall fix the duties and compensation of such personnel. The Commission in its bylaws shall provide for the personnel policies and programs of the Commission.

(f) The Commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(g) The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any State, the United States, or any governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(h) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(i) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party States.

(j) The Commission annually shall make to the Governor and legislature of each party State a report covering the activities of the Commission for the preceding year. The Commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the Commission by other provisions of the compact, the Commission shall have authority to:

(1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

(2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

(3) Develop proposals for adequate financing of education as a whole and at each of its many levels.

(4) Conduct or participate in research of the types referred to in this Article in any instance where the Commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

(5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

(6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

Article V. Cooperation With Federal Government.

(a) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United States may be represented on the Commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to Federal law, and may be drawn from any one or more branches of the Federal Government, but no such representative shall have a vote on the Commission.

(b) The Commission may provide information and make recommendations to any executive or legislative agency or officer of the Federal Government concerning the common educational policies of the States, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

(a) To assist in the expeditious conduct of its business when the full Commission is not meeting, the Commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the Commission, shall be constituted and function as provided in the bylaws of the Commission. One-fourth of the voting membership of the steering committee shall consist of Governors, one-fourth shall consist of Legislators, and the remainder shall consist of other members

of the Commission. A Federal representative on the Commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the Commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the Commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during the continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the Commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

(b) The Commission may establish advisory and technical committees composed of State, local, and Federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the States concerned, be established to consider any matter of special concern to two or more of the party States.

(c) The Commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

(a) The Commission shall advise the Governor or designated officer or officers of each party State of its budget and estimated expenditures for such period as may be required by the laws of that party State. Each of the Commissioner's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party States.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the Commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party States.

(c) The Commission shall not pledge the credit of any party States. The Commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III(g) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it pursuant to Article III(g) thereof, the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

Article VIII. Eligible Parties; Entry Into and Withdrawal.

(a) This compact shall have as eligible parties all States, Territories, and Possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a Governor, the term "Governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

(b) Any State or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

(c) Adoption of the compact may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his State a party only until December 31, 1967. During any period when a State is participating in this compact through gubernatorial action, the Governor shall appoint those persons who in addition to himself, shall serve as the members of the Commission from his State, and shall provide to the Commission an equitable share of the financial support of the Commission from any source available to him.

(d) Except for a withdrawal effective December 31, 1967, in accordance with paragraph (c) of this Article, any party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

Article IX. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any Government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the State affected as to all severable matters. (Mar. 14, 1984, D.C. Law 5-65, § 3, 31 DCR 198.)

Legislative history of Law 5-65. — See note to § 31-2301.

§ 31-2303. Commission members from District.

The 7 Commission members from the District of Columbia shall be:

- (1) The Mayor of the District of Columbia;
- (2) The Chairman of the Council of the District of Columbia;
- (3) The Chairperson of the Committee on Education of the Council of the District of Columbia;
- (4) The President of the Board of Education of the District of Columbia;
- (5) The Superintendent of Schools of the District of Columbia;
- (6) The Chairperson of the Board of Trustees of the University of the District of Columbia; and
- (7) The President of the University of the District of Columbia. (Mar. 14, 1984, D.C. Law 5-65, § 4, 31 DCR 198.)

Section references. — This section is referred to in § 31-2302.

Legislative history of Law 5-65. — See note to § 31-2301.

References in text. — The “Committee on Education of the Council of the District of

Columbia,” referred to in paragraph (3), has been changed to the “Committee on Education and Libraries” by Resolution 7-1 which adopted the Rules Resolution for Council Period VII, effective January 2, 1987.

§ 31-2304. Commission bylaws to be filed with Mayor.

Pursuant to Article III(i) of the Compact, the Commission shall file a copy of the Commission’s bylaws and amendments to the bylaws with the Mayor of the District of Columbia. (Mar. 14, 1984, D.C. Law 5-65, § 5, 31 DCR 198.)

Legislative history of Law 5-65. — See note to § 31-2301.

CHAPTER 24. STUDENT HEALTH CARE.

Subchapter I. General Provisions.

Sec.

- 31-2401. Definitions.
- 31-2402. Examination requirements; certificates of health, testing for lead poisoning and dental health.
- 31-2403. Exemption for religious beliefs.
- 31-2404. Notice of noncompliance; attendance unaffected.
- 31-2405. Fee for examination by public health authorities; indigency.
- 31-2406. Duty to obtain treatment.
- 31-2407. Student health files.
- 31-2408. Joint administration by Mayor and Board of Education; rules.
- 31-2409. Protection from liability.
- 31-2410. Reporting and studies of lead poisoning tests.

Subchapter II. Public School Nurses.

Sec.

- 31-2421. Assignment to schools; hours; level of services; nurse or athletic trainer at sponsored athletic events; funding.

Subchapter III. Administration of Medication by Public School Employees.

- 31-2431. Definitions.
- 31-2432. Administration of medication by a public school employee.
- 31-2433. Requirements for the licensed practitioner.
- 31-2434. Rules and regulations for implementation of subchapter.

Subchapter I. General Provisions.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 7-45, the preexisting text of this chapter, to

include §§ 31-2401 through 31-2409, has been designated as subchapter I of this chapter.

§ 31-2401. Definitions.

For the purposes of this subchapter:

(1) "Adult student" and "minor student" mean those terms as they are defined in § 499 of the Board of Education Rules, effective July 29, 1977 (5 DCMR 2099).

(2) "Certified nurse practitioner" means a registered nurse who is licensed in the United States or its territories, has had postgraduate education and training in pediatrics, adolescent medicine, or the assessment and care of school-aged children, and is certified as a nurse practitioner by the American Nurses' Association, the National Board of Pediatric Nurse Practitioners and Associates, or any other certifying organization acceptable to the Mayor.

(3) "District" means the District of Columbia.

(4) "Physician" means an individual who is licensed to practice medicine in the United States or its territories and has had postgraduate education or training in pediatrics or adolescent medicine. (Dec. 3, 1985, D.C. Law 6-66, § 2, 32 DCR 6086.)

Legislative history of Law 6-66. — Law 6-66, "Student Health Care Act of 1985," was introduced in Council and assigned Bill No. 6-135, which was referred to the Committee on Education and reassigned to the Committee on Human Services. The Bill was adopted on first and second readings on September 10, 1985, and September 24, 1985, respectively. Signed by the Mayor on October 9, 1985, it was as-

signed Act No. 6-89 and transmitted to both Houses of Congress for its review.

Short title. — The first section of D.C. Law 6-66 provided: "That this act may be cited as the 'Student Health Care Act of 1985'."

Editor's notes. — Because of the codification of D.C. Law 7-45 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 24 as subchapter I, "subchap-

ter” has been substituted for “chapter” in the introductory language.

§ 31-2402. Examination requirements; certificates of health, testing for lead poisoning and dental health.

(a) Except as provided in § 31-2403, whenever a student attending public or private school in the District enters prekindergarten, kindergarten, and the 1st, 3rd, 5th, 7th, 9th, and 11th grades, he or she shall furnish the school with a certificate of health completed and signed by a physician or certified nurse practitioner who has examined the student not more than 150 calendar days before his or her 1st day of school. The examination shall cover all items required by the certificate of health form for the student’s particular age group.

(a-1) Upon entry of a student under 6 years of age into a licensed day care center, Head Start or similar early childhood program, pre-kindergarten, kindergarten or first grade in a public or private school in the District, the student shall furnish the school with a certificate of testing for lead poisoning.

(b) The Mayor shall establish requirements for periodic testing for lead poisoning and dental examinations. The Mayor shall also establish requirements for the submission of certificates of testing for lead poisoning for the students subject to the provisions of subsection (a-1) of this section, and submission of certificates of dental health for elementary and secondary school students.

(c) The Mayor shall develop standard forms for certificates of health, testing for lead poisoning and dental health and shall make blank forms available in sufficient quantities to carry out the purposes of this subchapter. The certificate of health form shall contain at a minimum all items required by the American Academy of Pediatrics for each relevant age group.

(d) Except as provided in § 31-2403, the Mayor may require that prekindergarten, elementary, and secondary school students who participate in special programs or have been exposed to certain hazards meet examination requirements in addition to those established by this subchapter. (Dec. 3, 1985, D.C. Law 6-66, § 3, 32 DCR 6086; Oct. 15, 1993, D.C. Law 10-29, § 2(a)-(c), 40 DCR 5752.)

Legislative history of Law 6-66. — See note to § 31-2401.

Legislative history of Law 10-29. — See note to § 31-2410.

§ 31-2403. Exemption for religious beliefs.

Certificates of health, testing for lead poisoning and dental health shall not be required under this subchapter, and no physical, lead poisoning or dental examination shall be required by the Mayor, if a minor student’s parent or guardian or an adult student submits in good faith a written notarized statement to the principal or other appropriate school official affirming that the examination(s) in question would violate the established tenets and practices of the parent’s, guardian’s or student’s church or religious denomi-

nation. (Dec. 3, 1985, D.C. Law 6-66, § 4, 32 DCR 6086; Oct. 15, 1993, D.C. Law 10-29, § 2(d), 40 DCR 5752.)

Section references. — This section is referred to in § 31-2402.

Legislative history of Law 6-66. — See note to § 31-2401.

Legislative history of Law 10-29. — See note to § 31-2410.

§ 31-2404. Notice of noncompliance; attendance unaffected.

(a) No student shall be excluded from school on account of his or her failure to furnish a required certificate of health, testing for lead poisoning or dental health. If a certificate of health, testing for lead poisoning or dental health is not furnished when required, the principal or other appropriate school official shall give both oral and written notice to a minor student's parent(s) or guardian or an adult student that submission of the certificate is required by law. The notice shall explain how to contact the public health authorities for the purpose of having the student examined if private health care is not available or desired. If after 30 calendar days the student has still not furnished the required certificate of health, testing for lead poisoning or dental health, the principal or other appropriate school official shall inquire into whether the student has had an examination. If the student has not been given an examination and none is scheduled, the principal or other appropriate school official shall notify the public health authorities, who shall make prompt and, if necessary, continuing efforts to secure the consent of the parent(s), guardian, or adult student so that the student may as soon as possible be given the required examination(s) either in a public health facility or at school.

(b) Notwithstanding the provisions in subsection (a) of this section, any parent or guardian who, without good cause, fails to comply with the provisions of this subchapter or any rule issued pursuant to § 31-2408 shall, at the discretion of the Mayor, be subject to a fine not to exceed \$100 per school year. (Dec. 3, 1985, D.C. Law 6-66, § 5, 32 DCR 6086; Oct. 15, 1993, D.C. Law 10-29, § 2(e), 40 DCR 5752.)

Legislative history of Law 6-66. — See note to § 31-2401.

Legislative history of Law 10-29. — See note to § 31-2410.

§ 31-2405. Fee for examination by public health authorities; indigency.

A fee, based on rates to be established by the Mayor, shall be charged to a minor student's parent(s) or guardian or an adult student when the student has been examined by public health authorities pursuant to this subchapter and the parent(s), guardian, or adult student is not indigent. The Mayor shall define "indigency" under this section and may establish a sliding scale of partial payment based on the parents', guardian's, or adult student's reasonable ability to pay some of the examination costs. Under no circumstances shall

a student be excluded from school pending the payment of a fee imposed under this section. (Dec. 3, 1985, D.C. Law 6-66, § 6, 32 DCR 6086.)

Section references. — This section is referred to in § 31-2406.

Legislative history of Law 6-66. — See note to § 31-2401.

§ 31-2406. Duty to obtain treatment.

If a student is excluded from school pursuant to §§ 6-117 through 6-130, it shall be his or her responsibility if an adult student, and the responsibility of his or her parent(s) or guardian if a minor student, to obtain any treatment necessary for him or her to resume attendance at school. If private health care is not available or desired, the Mayor shall ensure that the necessary treatment is made available by public health authorities after obtaining the consent of the parent(s), guardian, adult student, or, when authorized by District law, minor student. Fees shall be determined in the same manner as provided in § 31-2405. (Dec. 3, 1985, D.C. Law 6-66, § 7, 32 DCR 6086.)

Legislative history of Law 6-66. — See note to § 31-2401.

§ 31-2407. Student health files.

(a) The Board of Education, with respect to public school students, and the Mayor, with respect to private school students, shall establish uniform procedures requiring elementary and secondary schools in the District to maintain health files for each student. Each student's health file shall contain all health-related documents submitted by or on behalf of the student.

(b) A student's health file and all certificates of health and dental health furnished pursuant to this subchapter shall be confidential and subject to inspection, disclosure, and use only as provided by applicable District and federal law. (Dec. 3, 1985, D.C. Law 6-66, § 8, 32 DCR 6086.)

Legislative history of Law 6-66. — See note to § 31-2401.

§ 31-2408. Joint administration by Mayor and Board of Education; rules.

The Mayor and the Board of Education shall jointly administer this subchapter and each shall issue rules pursuant to subchapter I of Chapter 15 of Title 1, to carry out its purposes. (Dec. 3, 1985, D.C. Law 6-66, § 9, 32 DCR 6086.)

Section references. — This section is referred to in § 31-2404.

Legislative history of Law 6-66. — See note to § 31-2401.

§ 31-2409. Protection from liability.

Neither the District government or its agencies, officials, and employees nor any private school or its officials and employees shall be subject to civil or criminal liability for failing to recognize or communicate a need for treatment from information contained in a student's health file, or to obtain treatment for a student solely on account of such information. (Dec. 3, 1985, D.C. Law 6-66, § 10, 32 DCR 6086.)

Legislative history of Law 6-66. — See note to § 31-2401.

§ 31-2410. Reporting and studies of lead poisoning tests.

(a) The Mayor shall establish requirements for the mandatory reporting of all lead poisoning tests conducted in the District of Columbia.

(b) The Mayor shall use the data collected in subsection (a) of this section to conduct an epidemiological study for the purpose of preventing future lead poisoning. The Mayor shall submit the study to the Council of the District of Columbia within 2 years from October 15, 1993. (Dec. 3, 1985, D.C. Law 6-66, § 10a, as added Oct. 15, 1993, D.C. Law 10-29, § 2(f), 40 DCR 5752.)

Legislative history of Law 10-29. — D.C. Law 10-29, the "Student Health Care Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-54, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second read-

ings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-61 and transmitted to both Houses of Congress for its review. D.C. Law 10-29 became effective on October 15, 1993.

*Subchapter II. Public School Nurses.***§ 31-2421. Assignment to schools; hours; level of services; nurse or athletic trainer at sponsored athletic events; funding.**

(a) A registered nurse shall be assigned to each District of Columbia ("District") elementary and secondary public school a minimum of 12 hours per week during each semester and during summer school if a summer school program is operated.

(b)(1) The minimum hours per week of registered nurse services at each school shall increase from 12 to 16 hours per week beginning 1 year after December 10, 1987. The minimum hours per week of registered nurse services at each school shall increase from 16 to 20 hours per week beginning 2 years after December 10, 1987.

(2) Licensed practical nurses may be used to supplement the registered nurse work force in meeting the required 20 hours per week minimum registered nurse services at each elementary and middle school. The licensed

practical nurses shall perform their duties under the appropriate supervision and in general collaboration with the registered nurses.

(c) Any school that, on May 1, 1987, exceeded the standards for registered nurse services prescribed by subsection (a) or (b) of this section shall continue that level of service, or the level prescribed by subsection (a) or (b) of this section, whichever is greater. No reduction shall be made in the level of registered nurse services at any school except in response to a reduced need based on a reduced student enrollment or a reduced proportion of students requiring special services because of handicapping conditions.

(d) Appropriate medical coverage, as defined in rules issued by the Board of Education in accordance with subchapter I of Chapter 15 of Title 1, and in consultation with the Director, Department of Health, shall be provided by the Board of Education at any interscholastic athletic event if the event is sponsored by a District public school, occurs in the District, and is identified as requiring medical coverage by rule. This medical coverage may include, but is not limited to:

- (1) A licensed medical doctor;
- (2) A registered nurse;
- (3) A certified athletic trainer;
- (4) An emergency medical technician ("EMT") or paramedic;
- (5) A certified prehospital care provider (as determined by the Director, Department of Health); or
- (6) An adult trained by the Red Cross with current certification in cardiopulmonary resuscitation ("CPR"), first aid, or life-saving.

(e)(1) Appropriate medical coverage shall be consistent with the risk of injury involved in the interscholastic athletic event. The medical personnel that shall be present at an interscholastic athletic event that occurs in the District and that is sponsored by a District secondary public school shall be detailed as follows:

- (A) For football, a licensed medical doctor;
- (B) For basketball, wrestling, soccer, indoor or outdoor track and field events, or cross-country, at least 1 licensed doctor, certified athletic trainer, registered nurse, EMT or paramedic, or any other certified prehospital care provider, as determined by the Director, Department of Health;
- (C) For volleyball, baseball, softball, or swimming, at least 1 licensed medical doctor, certified athletic trainer, registered nurse, EMT or paramedic, any other certified prehospital care provider, as determined by the Director, Department of Health, or adult trained by the American Red Cross with current certification in CPR, first aid, or life-saving;
- (D) For tennis or golf, medical personnel coverage shall be optional as financial resources allow; and
- (E) For any other sport, the appropriate level of medical personnel coverage, commensurate with the risk of injury involved, shall be set by the Superintendent of Schools of the District of Columbia, in consultation with the Director, Department of Health, and approved by the Board of Education; and

(2) The medical personnel coverage services shall be in addition to the minimum hours of registered nurse services required by subsection (a) or (b) of this section.

(f) Sufficient funds to carry out the requirements of this section shall be appropriated out of the general revenues of the District.

(g) Beginning with the fiscal year 1991, the responsibility for implementation of this act shall be transferred from the Department of Human Services to the Board of Education. (Dec. 10, 1987, D.C. Law 7-45, § 2, 34 DCR 6845; July 25, 1990, D.C. Law 8-149, § 2, 37 DCR 3717; Aug. 17, 1991, D.C. Law 9-29, § 2, 38 DCR 4213; Mar. 20, 1998, D.C. Law 12-60, § 401, 44 DCR 7378.)

Effect of amendments. — D.C. Law 12-60 substituted "Director, Department of Health" for "Commissioner of Public Health" in the introductory language of (d) and in (d)(5), (e)(1)(B), (e)(1)(C), and (e)(1)(E).

Temporary amendment of section. — D.C. Law 12-59 substituted "Director, Department of Health" for "Commissioner of Public Health" in the introductory language of (d) and in (d)(5), (e)(1)(B), (e)(1)(C), and (e)(1)(E).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary amendment of section, see § 401 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 401 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 7-45. — Law 7-45, "District of Columbia Public School Nurse Assignment Act of 1987," was introduced in Council and assigned Bill No. 7-47, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 14, 1987, and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-78 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-130. — Law 8-130 was introduced in Council and assigned Bill No. 8-528. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Signed by the Mayor on March 27, 1990, it was assigned Act No. 8-182 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-149. — Law 8-149 was introduced in Council and assigned Bill No. 8-511, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by the Mayor on May 30, 1990, it was assigned Act

No. 8-207 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-19. — Law 9-19 was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-29. — Law 9-29 was introduced in Council and assigned Bill No. 9-160, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-56 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-59. — See note to § 31-2218.

Legislative history of Law 12-60. — See note to § 31-2218.

References in text. — "This act" referred to in (g) is D.C. Law 8-149.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Private action mandating compliance approved. — This section creates an implied private right of action. Because the District conceded that it had never complied with this section and has raised on appeal only the issue of whether this section creates an implied private right of action, it follows that the trial court properly granted summary judgment for appellee parents on the claim under this section as well as permanent injunctive relief mandating compliance. *Kelly v. Parents United for D.C. Pub. Sch., App. D.C., 641 A.2d 159 (1994).*

Section 1983 claim not available. — Since no other additional kind of remedy would provide any greater, more expedient protection of appellee parents presumed property interest in school nurses than injunctive relief, and because District of Columbia procedures were deemed constitutionally adequate, there was no 42 U.S.C. § 1983 violation and attorney fees under the federal statute were not recoverable.

Kelly v. Parents United for D.C. Pub. Sch., App.
D.C., 641 A.2d 159 (1994).

Subchapter III. Administration of Medication by Public School Employees.

§ 31-2431. Definitions.

For purposes of this subchapter, the term:

(1) "Administer" means:

(A) The direct application of medication to the human body whether by ingestion, inhalation, or topical means; and

(B) Subcutaneous and intramuscular injections in emergency circumstances only.

(2) "General supervision" means:

(A) A registered nurse or licensed practitioner is available to the public school employee for consultation either in person or by a communication device; and

(B) The physical presence of the registered nurse or licensed practitioner is not required during the time medication is given to a student.

(3) "Licensed nurse" means either a registered nurse or licensed practical nurse.

(4) "Licensed practitioner" means a licensed physician, dentist, podiatrist, or advanced registered nurse.

(5) "Medication" means a controlled or noncontrolled substance or treatment regarded as effective in bringing about recovery or restoration of health or the normal functioning of the body.

(6) "Prescription" means an order for medication signed by a licensed practitioner or transmitted by the practitioner to a pharmacist by word of mouth, telephone, telegraph, or other means of communication and recorded in writing by the pharmacist.

(7) "Principal" means the chief administrative officer of a public school.

(8) "Student" means a minor student enrolled in a District of Columbia public school program or a nonemancipated adult student enrolled in a District of Columbia public school special education program. (Nov. 20, 1993, D.C. Law 10-55, § 2, 40 DCR 7219.)

Legislative history of Law 10-55. — D.C. Law 10-55, the "Administration of Medication by Public School Employees Act of 1993," was introduced in Council and assigned Bill No. 10-14, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act No. 10-108 and transmitted to both Houses of Congress for its review. D.C. Law 10-55 became effective on November 20, 1993.

Legislative history of Law 11-21. — Law 11-21, the "Administration of Medication by Public School Employees Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-45, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on March 7, 1995, and April 4, 1995, respectively. Signed by the Mayor on April 17, 1995, it was assigned Act No. 11-40 and transmitted to both Houses of Congress for its review. D.C. Law 11-21 became effective on June 17, 1995.

§ 31-2432. Administration of medication by a public school employee.

(a) Notwithstanding any other law, rule, or regulation, an employee of a public school who has been trained in accordance with § 31-2434(b), pursuant to written authorization by the principal of a public school, may administer prescription or nonprescription medication to a student in compliance with the signed, written instructions of a licensed practitioner if:

(1) The parent, guardian, or other adult having care and charge of the student has administered the initial dosage to the student except in emergency circumstances requiring the administration of epipen;

(2) The parent, guardian, or other adult having care and charge of the student has hand-delivered the medication to the school;

(3) The parent, guardian, or other adult having care and charge of the student has consented to the administration of the medication in writing; and

(4) The employee is under the general supervision of a registered nurse or licensed practitioner pursuant to rules and regulations jointly promulgated by the District of Columbia Board of Education and the Department of Human Services.

(b) An employee of the District Government or the Board of Education who administers medication in accordance with this subchapter, or authorizes or performs general supervision of, or trains a public school employee in medication administration shall be immune from civil liability arising from an act or omission in authorizing, supervising, training, or administering medication. An employee shall not be immune from civil liability if the act or omission in authorizing, supervising, training, or administering medication is intentional or manifests a willful or wanton disregard for the health or safety of the student to whom the medication is administered. Neither the District Government nor the Board of Education shall be liable in circumstances where the employee is immune under this section, unless the conduct of the employee is gross negligence. (Oct. 5, 1993, D.C. Law 10-55, § 3, 40 DCR 7219; May 16, 1995, D.C. Law 10-255, § 24, 41 DCR 5193.)

Section references. — This section is referred to in § 31-2434.

Emergency act amendments. — See notes to § 31-2431.

Legislative history of Law 10-55. — See note to § 31-2431.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned

Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 31-2433. Requirements for the licensed practitioner.

(a) The written instructions of the licensed practitioner shall state the name of the student, the diagnosis of the student, the name of the medication, the dosage, the time of administration, duration of medication, side effects of the medication, if any, the signature and telephone number of the licensed practitioner, and the date of the instructions.

(b) The medication shall be labeled as to state the name of the student, the name of the medication, the dosage, the time of administration, and the duration of medication. (Oct. 5, 1993, D.C. Law 10-55, § 4, 40 DCR 7219.)

Emergency act amendments. — See notes to § 31-2431.

Legislative history of Law 10-55. — See note to § 31-2431.

§ 31-2434. Rules and regulations for implementation of subchapter.

(a) Within 60 days of November 20, 1993, the District of Columbia Board of Education and the District of Columbia Department of Human Services shall jointly issue rules and regulations to implement this subchapter. The rules and regulations issued shall include procedures for:

(1) Obtaining and filing written instructions and consent required by this subchapter;

(2) Periodic review of written instructions;

(3) Storage of medication;

(4) Recordkeeping;

(5) Initial and ongoing training of public school employees to administer medication;

(6) Administering medication in emergency or life-threatening circumstances in accordance with § 31-2432(a)(1);

(7) Registered nurses or other licensed practitioners providing general supervision over District of Columbia public school employees;

(8) The identification of public school employees, in consultation with the school-based licensed nurse, who shall administer medication;

(9) The establishment of criteria for the selection, in consultation with the school-based licensed nurse, of employees at each public school who shall administer medication;

(10) The provision for the successful completion of training for public school employees pursuant to this subchapter; and

(11) The monitoring of public school employees who may administer medication to students.

(b) Training programs for all public school employees who may administer medication in accordance with this subchapter, shall be developed and provided in collaboration with the District of Columbia Public Schools and the District of Columbia Department of Human Services. (Oct. 5, 1993, D.C. Law 10-55, § 5, 40 DCR 7219.)

Section references. — This section is referred to in § 31-2432.

Legislative history of Law 10-55. — See note to § 31-2431.

Emergency act amendments. — See notes to § 31-2431.

CHAPTER 25. INFORMATION TECHNOLOGY.

Subchapter I. Education in Partnership with Technology Corporation. [Repealed.]

Sec.
31-2501 to 31-2512. [Repealed].

Subchapter II. Twenty-First Century School Information Technology Program.

31-2521. Establishment of the 21st Century Public School Information Technology Program.

Sec.
31-2522. Computer literacy requirement for teachers.
31-2523. Establishment of the 21st Century Public School Information Technology Program Fund.
31-2524. Eligibility for funding.
31-2525. Sunset provision.

Subchapter I. Education in Partnership with Technology Corporation.

§§ 31-2501 to 31-2512. Education in Partnership with Technology Corporation established; functions; private participation; board of directors; composition; appointment; term of office; vacancies; quorum; powers of the EPTC; duties and responsibilities; authorizations; promulgation of rules; conflict of interest; capitalization; exemption from District of Columbia taxes and assessments; annual audit; report; employee requirements; title to property upon dissolution.

Repealed. _____, 19_____, D.C. Law 12-(Act 12-256), § 401(j), 45 DCR 1172.

Editor's notes. — Because of the enactment of subchapter II by D.C. Law 12-60 the existing provisions (repealed by D.C. Law 12-(Act 12-256)) have been designated as subchapter I.

Subchapter II. Twenty-First Century School Information Technology Program.

§ 31-2521. Establishment of the 21st Century Public School Information Technology Program.

There is established the 21st Century Public School Information Technology Program ("Program") to be comprised of a computer literacy and training project for teachers employed by the District of Columbia Public School ("DCPS") as of March 20, 1998. The Program shall provide grants to all teachers for computer training and the purchase of personal computer equipment, programs, or updates, so long as the grant is used only for these purposes, and the establishment of a state-of-the-art computer center with

links to the internet, in a middle school, as a model technology center. (Mar. 20, 1998, D.C. Law 12-60, § 1402, 44 DCR 7378.)

Temporary addition of subchapter. — Sections 1401 to 1406 of D.C. Law 12-59 enacted §§ 31-2521 to 31-2525, comprising subchapter II of Chapter 25 of Title 31.

Section 2001(b) of D.C. Law 12-59 provides that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary addition of subchapter II, see §§ 1401 to 1406 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196); and see §§ 1401 to 1406 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 12-59. — Law 12-59, the “Fiscal Year 1998 Revised Budget Support Temporary Act of 1997,” was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22,

1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

21st Century Public School Information Technology Program Act of 1997. — Section 1401 of D.C. Law 12-60 provided that Title XIV of the act may be cited as the “21st Century Public School Information Technology Program Act of 1997.”

§ 31-2522. Computer literacy requirement for teachers.

(a) Beginning on March 20, 1998, any person hired as a school teacher with the DCPS shall be required at the time of employment to have basic computer skills with the ability to access the Internet.

(b) All teachers employed by the DCPS prior to March 20, 1998 shall be required to acquire, by the year 2001, basic computer skills with the ability to access the Internet. (Mar. 20, 1998, D.C. Law 12-60, § 1403, 44 DCR 7378.)

Temporary addition of subchapter. — See note to § 31-2521.

Emergency act amendments. — For temporary addition of subchapter, see note to § 31-2521.

Legislative history of Law 12-59. — See note to § 31-2521.

Legislative history of Law 12-60. — See note to § 31-2521.

Application of Law 12-60. — See note to § 31-2521.

21st Century Public School Information Technology Program Act of 1997. — See note to § 31-2521.

§ 31-2523. Establishment of the 21st Century Public School Information Technology Program Fund.

There is established the 21st Century Public School Information and Technology Program Fund to receive the real property tax assessed against George Washington University on the real property known as the George

Washington University Hospital located at 901 23rd Street, N.W., Square 0054, Lot 0030. (Mar. 20, 1998, D.C. Law 12-60, § 1404, 44 DCR 7378.)

Temporary addition of subchapter. — See note to § 31-2521.

Emergency act amendments. — For temporary addition of subchapter, see note to § 31-2521.

Legislative history of Law 12-59. — See note to § 31-2521.

Legislative history of Law 12-60. — See note to § 31-2521.

Application of Law 12-60. — See note to § 31-2521.

21st Century Public School Information Technology Program Act of 1997. — See note to § 2521.

§ 31-2524. Eligibility for funding.

Any eligibility for funds in this program shall be subject to the availability of appropriations as set forth in § 31-2523. (Mar. 20, 1998, D.C. Law 12-60, § 1405, 44 DCR 7378.)

Temporary addition of subchapter. — See note to § 31-2521.

Emergency act amendments. — For temporary addition of subchapter, see note to § 31-2521.

Legislative history of Law 12-59. — See note to § 31-2521.

Legislative history of Law 12-60. — See note to § 31-2521.

Application of Law 12-60. — See note to § 31-2521.

21st Century Public School Information Technology Program Act of 1997. — See note to § 31-2521.

§ 31-2525. Sunset provision.

This subchapter shall expire in 4 years after March 20, 1998 unless extended by the Council. (Mar. 20, 1998, D.C. Law 12-60, § 1406, 44 DCR 7378.)

Temporary addition of subchapter. — See note to § 31-2521.

Emergency act amendments. — For temporary addition of subchapter, see note to § 31-2521.

Legislative history of Law 12-59. — See note to § 31-2521.

Legislative history of Law 12-60. — See note to § 31-2521.

Application of Law 12-60. — See note to § 31-2521.

CHAPTER 26. NURSES TRAINING CORPS.

Sec.

31-2601. Establishment; financial aid.

31-2602. Administration.

Sec.

31-2603. Rules.

§ 31-2601. Establishment; financial aid.

(a) There shall be established in the District of Columbia ("District") a Nurses Training Corps ("Corps"), which shall provide financial aid to District residents desiring to obtain a Licensed Practical Nurse ("LPN") certificate or an Associate of Arts degree or a Bachelor of Science degree in nursing.

(b) The financial aid provided by the Corps shall include tuition and may include the following:

- (1) The reasonable cost of textbooks and supplies;
- (2) The reasonable transportation costs to and from classes;
- (3) The reasonable cost of child care while attending classes; and
- (4) A stipend to help defray the cost of reasonable living expenses for full-time enrolled students.

(c) In exchange for financial aid, the student shall contract to work for D.C. General Hospital, the Department of Human Services, the Office on Aging, or other District agencies or facilities as designated by the Mayor for a specified number of years after completion of the agreed nursing education.

(d) The basic criteria for selection to the Corps shall include the following:

- (1) Bona fide residency in the District for 2 years immediately prior to application to the Corps;
- (2) Stated interest in nursing and public service in the field of nursing within the District;
- (3) Financial need; and
- (4) Admission to an accredited program of nursing study within the District. (Oct. 9, 1987, D.C. Law 7-32, § 2, 34 DCR 5312; Apr. 30, 1988, D.C. Law 7-104, § 11, 35 DCR 147.)

Legislative history of Law 7-32. — Law 7-32 was introduced in Council and assigned Bill No. 7-146, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1987, and June 30, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law

7-104, "Nurses Training Corps Establishment Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and Dec. 8, 1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

§ 31-2602. Administration.

The Department of Human Services shall be responsible for the administration of the Corps. (Oct. 9, 1987, D.C. Law 7-32, § 3, 34 DCR 5312.)

Legislative history of Law 7-32. — See note to § 31-2601.

§ 31-2603. Rules.

Within 120 days of October 9, 1987, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. The proposed rules shall include provisions regarding the terms of the employment contracts, including the period of service required. (Oct. 9, 1987, D.C. Law 7-32, § 4, 34 DCR 5312.)

Legislative history of Law 7-32. — See note to § 31-2601.

Approval of Nurses' Training Corps rules. — Pursuant to Resolution 8-286, the "Nurses Training Corps Establishment Act Proposed Rules Approval Resolution of 1990", effective November 2, 1990, the Council approved

the proposed rules issued pursuant to the Nurses Training Corps Establishment Act of 1987.

Delegation of Authority Pursuant to D.C. Law 7-32, the "Nurses Training Corps Establishment Act of 1987". — See Mayor's Order 89-183, August 14, 1989.

CHAPTER 27. INTERPRETERS.

Sec.

31-2701. Definitions.

31-2702. Interpreters required.

31-2703. Notice of need for interpreter.

31-2704. Preliminary determination of interpreter's qualifications.

31-2705. Intermediary interpreter to be used.

31-2706. Waiver.

Sec.

31-2707. Oath of interpreter.

31-2708. Privileged communications.

31-2709. Interpreter in full view.

31-2710. Visual recording.

31-2711. Office of Interpreter Services.

31-2712. Compensation and payments.

§ 31-2701. Definitions.

For the purposes of this chapter, the term:

(1) "Appointing authority" means the presiding judge of any court of the District of Columbia, the chairperson of any District of Columbia board or commission, the director or commissioner of any department or agency of the District of Columbia, the Chairman of the Council of the District of Columbia or the chairperson of any committee of the Council of the District of Columbia conducting a hearing, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this chapter.

(2) "Communication-impaired person" means a person whose hearing is impaired or who does not speak English.

(3) "Hearing-impaired person" means a person who, because of a hearing impairment, cannot readily understand oral communications or who cannot communicate effectively through speech.

(4) "Non-English speaking person" means a person who is unable to readily understand oral and written communications in the English language or who cannot communicate effectively in the spoken English language.

(5) "Qualified interpreter" means a person who is listed by the Office of Interpreter Services as being skilled in the language or form of communication needed to communicate accurately with a communication-impaired person and who is able to translate information to and from the communication-impaired person.

(6) "Intermediary interpreter" means any person, including any hearing-impaired person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language by acting as an intermediary between a hearing-impaired person and a qualified interpreter. (Jan. 28, 1988, D.C. Law 7-62, § 2, 34 DCR 7426.)

Legislative history of Law 7-62. — Law 7-62, "Interpreters for Hearing-Impaired and Non-English Speaking Persons Act of 1987," was introduced in Council and assigned Bill No. 7-108, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 13, 1987, and October 27, 1987, respectively. Signed by the Mayor on November 5, 1987, it was assigned Act No. 7-95 and trans-

mitted to both Houses of Congress for its review.

Applicability of chapter. — All interpreters retained in a proceeding, whether retained by the communication impaired person or by the prosecution, including those paid by the United States Attorneys Office instead of the District agency charged with providing such interpreters, were subject to this chapter. *Ko v. United States*, App. D.C., 694 A.2d 73 (1997).

Appointing authority. — Section 31-2704 requires that all interpreters, whether for the defendant or the District, be appointed by the court. *Ko v. United States*, App. D.C., 694 A.2d 73 (1997).

Qualified interpreter. — Where the defendant himself alerted the court to the interpreter's mistranslation which permitted the court to take corrective measures by having the defendant repeat his answer, the defendant sufficiently preserved the issue of interpreter competence for appellate review. *Gonzalez v. United States*, App. D.C., 697 A.2d 819 (1997).

A non-English speaking party or witness has

a right to a "qualified" interpreter who will render accurate translations; a defendant's right to present a defense and confront his or her accusers can be impeded by the admission of incorrectly-interpreted witness testimony. *Flores v. United States*, App. D.C., 698 A.2d 474 (1997).

Cited in *Redman v. United States*, App. D.C., 616 A.2d 336 (1992); *United States v. Barrera*, 121 WLR 917 (Super. Ct. 1993); *Esteves v. Esteves*, App. D.C., 680 A.2d 398 (1996); *Gonzalez v. United States*, App. D.C., 697 A.2d 819 (1997).

§ 31-2702. Interpreters required.

(a) Whenever a communication-impaired person is a party or witness, or whenever a juvenile whose parent or parents are communication impaired is brought before a court at any stage of a judicial or quasi-judicial proceeding before a division or office of a court of the District of Columbia, including, but not limited to, civil and criminal court proceedings, proceedings before a commissioner, juvenile proceedings, child support and paternity proceedings, and mental health commitment proceedings, the appointing authority may appoint a qualified interpreter to interpret the proceedings to the communication-impaired person and to interpret the communication-impaired person's testimony. The appointing authority shall appoint a qualified interpreter upon the request of the communication-impaired person.

(b) In any criminal, delinquency, or child neglect proceeding in which counsel has been appointed to represent an indigent defendant who is communication-impaired, a qualified interpreter shall be appointed to assist in communication with counsel in all phases of the preparation and presentation of the case.

(c) Whenever a communication-impaired person is a party or a witness in an administrative proceeding before a department, board, commission, agency, or licensing authority of the District of Columbia, the appointing authority conducting the proceeding may appoint a qualified interpreter to interpret the proceedings to the communication-impaired person and to interpret the communication-impaired person's testimony. The appointing authority shall appoint a qualified interpreter upon the request of the communication-impaired person.

(d) Whenever a communication-impaired person is a witness before any legislative committee, the appointing authority conducting the proceeding may appoint a qualified interpreter to interpret the proceedings to the communication-impaired person and to interpret the communication-impaired person's testimony. The appointing authority shall appoint a qualified interpreter upon the request of the communication-impaired person.

(e) Whenever a communication-impaired person is arrested and taken into custody for an alleged violation of a criminal law, the arresting officer shall procure a qualified interpreter for any custodial interrogation, warning, notification of rights, or taking of a statement. No person who has been arrested but who is otherwise eligible for release shall be held in custody

pending arrival of an interpreter. No answer, statement, or admission, written or oral, made by a communication-impaired person in reply to a question of a law-enforcement officer in any criminal or delinquency proceeding may be used against that communication-impaired person unless either the answer, statement, or admission was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of a waiver, unless the court makes a special finding upon proof by a preponderance of the evidence that the answer, statement, or admission made by the communication-impaired person was made knowingly, voluntarily, and intelligently. (Jan. 28, 1988, D.C. Law 7-62, § 3, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

Court's duty to inquire. — Trial court had no reason to make an inquiry regarding plaintiff's ability to communicate in English where plaintiff's English, though not perfect, was good enough to be understood, and where plaintiff never advised the court that she was not an English-speaking person. *Esteves v. Esteves*, App. D.C., 680 A.2d 398 (1996).

Opportunity to present defense and confront accusers. — A non-English speaking party or witness has a right to a "qualified" interpreter who will render accurate translations; a defendant's right to present a defense and confront his or her accusers can be impeded by the admission of incorrectly-interpreted witness testimony. *Flores v. United States*, App. D.C., 698 A.2d 474 (1997).

Admissibility of statements taken in violation of this section. — Statements that the police elicit without using a qualified interpreter or without first obtaining a valid waiver may not be used in the government's case-in-

chief. *Barrera v. United States*, App. D.C., 599 A.2d 1119 (1991).

Voluntary statements taken in violation of the Interpreter Act may be used to impeach a defendant, provided that there are sufficient guarantees of trustworthiness to indicate that those statements are reliable and accurate. *Barrera v. United States*, App. D.C., 599 A.2d 1119 (1991).

Spanish-speaking defendant's statements elicited during questioning by Spanish-speaking detective were trustworthy and reliable; therefore, the statements were properly admitted for impeachment purposes, notwithstanding the violation of the Interpreter Act which resulted from the detective's questioning of defendant without a "qualified interpreter." *United States v. Barrera*, 121 WLR 917 (Super. Ct. 1993).

Appointing authority. — Section 31-2704 requires that all interpreters, whether for the defendant or the District, be appointed by the court. *Ko v. United States*, App. D.C., 694 A.2d 73 (1997).

§ 31-2703. Notice of need for interpreter.

(a) A communication-impaired person entitled to an interpreter under this chapter shall, if practicable, notify the appropriate appointing authority of the person's need for an interpreter at least 5 business days prior to the person's appearance. A failure to notify the appointing authority of the need for an interpreter is not a waiver of the right to an interpreter.

(b) An appointing authority, when it knows a communication-impaired person is, or will be coming before it, shall inform the communication-impaired person of the right to a qualified interpreter. In a judicial proceeding, when the court knows that a communication-impaired person will be before it, the court shall inform the party, or the parent of a juvenile who is a party, of the right of any communication-impaired person to a qualified interpreter. (Jan. 28, 1988, D.C. Law 7-62, § 4, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

§ 31-2704. Preliminary determination of interpreter's qualifications.

Before appointing an interpreter, an appointing authority shall make a preliminary determination that the interpreter is able to accurately communicate with and translate information to and from the communication-impaired person involved. If the interpreter is not able to provide effective communication with the communication-impaired person, the appointing authority shall appoint another qualified interpreter. (Jan. 28, 1988, D.C. Law 7-62, § 5, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

Waiver of right to question interpreter's competence. — Although no preliminary determination of an interpreter's ability to communicate with defendant was made, defendant waived his right to question the interpreter's competence by failing to raise the issue at trial. *Redman v. United States*, App. D.C., 616 A.2d 336 (1992).

Preliminary determination not made. — Evidence held insufficient to establish that the court made a preliminary determination that the interpreter was able to accurately communicate with and translate information to and from the communication impaired person. *Ko v. United States*, App. D.C., 694 A.2d 73 (1997).

Failure to make preliminary determination not "plain error." — Given the lack of any suggestion in the record that a judge's failure to make a preliminary determination of

an interpreter's competence prejudiced the defense in any way, defendant did not satisfy the "plain error" rule's "miscarriage of justice" requirement. *Redman v. United States*, App. D.C., 616 A.2d 336 (1992).

Although trial court committed an error by not verifying at the beginning of the trial that the interpreter was able to accurately communicate with and translate information to and from the defendant, the effect of the error was held to be minimal where (1) the government's case was largely uncontradicted, and, if credited by the jury, compelling, (2) the defendant had some ability to monitor the questions and answers conveyed by the interpreter, (3) the defendant's testimony presented a coherent picture consistent with the defense's version of events, and (4) the defendant suffered no prejudice from the one identified instance of mis-translation. *Gonzalez v. United States*, App. D.C., 697 A.2d 819 (1997).

§ 31-2705. Intermediary interpreter to be used.

In any proceeding involving a hearing-impaired person in which a qualified interpreter is unable to render a satisfactory interpretation without the aid of an intermediary interpreter, the hearing-impaired person involved may be permitted by the appointing authority to retain another person to act as an intermediary interpreter to assist the qualified interpreter during the proceedings. (Jan. 28, 1988, D.C. Law 7-62, § 6, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

§ 31-2706. Waiver.

(a) A communication-impaired person entitled to the services of an interpreter under this chapter may waive the services of a qualified interpreter in whole or in part. The waiver must be made in writing, or orally on the record, by the communication-impaired person following consultation with that person's attorney. If the person does not have an attorney, the waiver must be made in writing by the communication-impaired person in that person's

written language and the waiver must be approved in writing, by the appointing authority.

(b) A communication-impaired person who has waived an interpreter under this section may provide his or her own interpreter at his or her own expense, without regard to whether the interpreter is qualified under this chapter. (Jan. 28, 1988, D.C. Law 7-62, § 7, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

Cited in *Barrera v. United States*, App. D.C., 599 A.2d 1119 (1991).

§ 31-2707. Oath of interpreter.

Before an interpreter appointed under this chapter begins to interpret, the interpreter shall take an oath or affirmation that the interpreter will make a true interpretation in an understandable manner to and for the person for whom the interpreter is appointed to the best of the interpreter's skills and judgment. (Jan. 28, 1988, D.C. Law 7-62, § 8, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

§ 31-2708. Privileged communications.

If a communication made by a communication-impaired person through an interpreter is privileged, the privilege extends also to the interpreter. (Jan. 28, 1988, D.C. Law 7-62, § 9, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

Cited in *Barrera v. United States*, App. D.C., 599 A.2d 1119 (1991).

§ 31-2709. Interpreter in full view.

Whenever an interpreter is required to be appointed to assist a hearing-impaired person under this chapter, the appointing authority shall not commence proceedings until the appointed interpreter is in full view of and spatially situated so as to assure effective communication with the hearing-impaired person or persons involved as participants. (Jan. 28, 1988, D.C. Law 7-62, § 10, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

§ 31-2710. Visual recording.

In any proceeding involving a hearing-impaired person, an appointing authority, on the appointing authority's own motion or on the motion of a party to the proceedings, may order that an electronic, visual recording of the testimony of the hearing-impaired person and its interpretation be made for use in verification of the official transcript of the proceedings. (Jan. 28, 1988, D.C. Law 7-62, § 11, 34 DCR 7426.)

Legislative history of Law 7-62. — See note to § 31-2701.

§ 31-2711. Office of Interpreter Services.

(a) There is established an Office of Interpreter Services ("Office") to facilitate the use of interpreters in administrative, judicial, and legislative proceedings in the District of Columbia.

(b) The duties and responsibilities of the Office shall include the following:

(1) The Office shall formulate and apply reasonable standards for evaluating the credentials and qualifications of persons who may serve as qualified interpreters in bilingual proceedings and proceedings involving hearing-impaired persons. In formulating and applying the standards for qualifications, the Office shall take into consideration such factors as education, training, experience, demonstrated current competence, and certification by a recognized private, federal, or state registry, board, or other organization that is determined by the Office to possess a sufficient level of competence, training, testing, and certification of interpreters in the particular language speciality of the interpreter.

(2) The Office shall establish and maintain a current list of qualified interpreters who are available to provide interpreter services in the District of Columbia. The list shall include the names of persons who are bilingual interpreters and oral or manual interpreters for hearing-impaired persons.

(3) The Office shall distribute the list of qualified interpreters to appointing authorities upon request.

(4) The Office shall coordinate all requests for interpreter services including scheduling and arranging to provide for all interpreter services requested by appointing authorities.

(5) The Office shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules that prescribe a schedule of reasonable fees for services rendered by interpreters and shall establish rules governing the method of payment.

(6) The Office shall pay for the salaries, fees, expenses, and costs incident to providing interpreter services as set forth in § 31-2712.

(7) The Office may perform other duties and functions as are necessary to facilitate the use of interpreter services in the District of Columbia.

(c)(1) Whenever an interpreter is required under this chapter, the appointing authority shall request the Office to assist in locating a qualified interpreter to provide interpreter services. The Office shall promptly assist in locating an interpreter and shall assist with scheduling and arranging to provide for the interpreter services. If the circumstances are such that the appointing authority is unable, or it is impractical, to request the assistance of the Office in locating a qualified interpreter, the appointing authority may arrange for and appoint a qualified interpreter whose name is included on a list of interpreters maintained by the Office.

(2) If none of the listed interpreters is available and communication with a communication-impaired person is required to ascertain information relating to a medical emergency or to determine whether or not to permit that person's immediate release from custody or detention, then the appointing authority

shall appoint any person who is able to accurately and simultaneously communicate with and translate information to and from the particular communication-impaired person involved.

(d) In fulfilling the duties and responsibilities set forth in subsection (b) of this section, the Office may contract for interpreter services at a rate of compensation mutually agreed upon by the Office and the interpreter whose services are contracted for, compensate interpreters on an hourly rate or a per diem rate, employ interpreters on a full-time or part-time basis, use qualified volunteer services, or procure the services in any other method consistent with the District of Columbia law. The Office may, with the concurrence of an agency, department, or governmental entity, assign an interpreter to that agency, department, or governmental entity. The assignment shall be made in accordance with § 1-628.2. (Jan. 28, 1988, D.C. Law 7-62, § 12, 34 DCR 7426; May 10, 1989, D.C. Law 7-231, § 39, 36 DCR 492.)

Legislative history of Law 7-62. — See note to § 31-2701.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Delegation of authority under D.C. Law 7-62, the Interpreters for the Hearing-Impaired & Non-English Speaking Persons Act of 1987. — See Mayor's Order 90-132, October 5, 1990.

Applicability of section. — All interpreters retained in a proceeding, whether retained by

the communication impaired person or by the prosecution, including those paid by the United States Attorneys Office instead of the District agency charged with providing such interpreters, were subject to this chapter. *Ko v. United States*, App. D.C., 694 A.2d 73 (1997).

Compensation. — Under this chapter, all interpreters are required to be paid by the Office of Interpreter Services, and to the extent that Superior Court Criminal Rule 28(b) permits the United States Attorney's office to pay interpreters directly, the Rule conflicts with §§ 31-2711 and 31-2712 and is invalid. *Ko v. United States*, App. D.C., 694 A.2d 73 (1997).

Cited in *Barrera v. United States*, App. D.C., 599 A.2d 1119 (1991); *Redman v. United States*, App. D.C., 616 A.2d 336 (1992).

§ 31-2712. Compensation and payments.

(a) An appointed interpreter shall receive a reasonable fee for the interpreter's services.

(b) The salaries, fees, expenses, and costs incident to providing the services of interpreters under this chapter shall be paid for by the Office.

(c) Except in cases in which the communication-impaired person is financially unable to obtain adequate interpreter services, the appointing authority in any court of the District of Columbia may direct that all or part of the salaries, fees, expenses, and costs incurred for interpreter services be apportioned among the parties in a civil action or may be taxed as costs in a civil action. (Jan. 28, 1988, D.C. Law 7-62, § 13, 34 DCR 7426.)

Section references. — This section is referred to in § 31-2711.

Legislative history of Law 7-62. — See note to § 31-2701.

Payment by other agencies. — Under this chapter, all interpreters are required to be paid

by the Office of Interpreter Services, and to the extent that Superior Court Criminal Rule 28(b) permits the United States Attorney's office to pay interpreters directly, the Rule conflicts with §§ 31-2711 and 31-2712 and is invalid. *Ko v. United States*, App. D.C., 694 A.2d 73 (1997).

CHAPTER 28. CHARTER SCHOOLS.

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Subchapter I. Public Charter Schools.

Subpart A. Definitions; Findings; Purposes.

§ 31-2801. Definitions.

For the purposes of this subchapter, the term:

(1) "Adult student" means an individual who is 18 years of age or older and who is enrolled in adult, community, continuing, or vocational education programs, including Adult Basic Education, Adult Secondary Education Diploma Programs or General Educational Development Programs, and English as a Second Language Programs, Levels I through IV.

(2) "Applicant" means a person, group, or organization, including a private, public, or quasi-public entity, that is nonprofit, nonreligious, nonsectarian, and nonhome-based, or an institution of higher learning that seeks to establish a public charter school or to renew a charter granted pursuant to this subchapter.

(3) "Authority" means the District of Columbia Financial Responsibility and Management Assistance Authority established by § 47-392.3(c).

(4) "Average daily attendance" means the aggregate student attendance of a public school for a school year divided by the number of days school was in session and students were under the guidance and direction of teachers.

(5) "Average daily membership" means the aggregate student membership of a public school for a school year divided by the number of days school was in session and students were under the guidance and direction of teachers.

(6) "Board" means the District of Columbia Board of Education.

(7) "Board of Trustees" means the governing board of a public charter school, the members of which have been elected or selected pursuant to the school's charter.

(8) "Charter school" means a publicly funded school in the District of Columbia that is established in accordance with this subchapter.

(9) "Control year" means any fiscal year for which a financial plan and budget approved by the Authority is in effect and includes Fiscal Year 1996.

(10) "Local Education Agency" or "LEA" means the Board and the Board of Trustees of a charter school.

(11) "Nonresident student" means a minor student who attends a District public school and does not have a parent residing in the District or a person who is 18 years of age or older who attends a District public school and does not reside in the District.

(12) "Parent" means a person who has custody of a child attending a public school who is a natural parent of the child, a stepparent of the child, has adopted the child, or has been appointed as a guardian for the child by a court of competent jurisdiction.

(13) "Petition" means a proposed written application to establish a charter school, submitted by an eligible applicant to the Superintendent.

(14) "Public school" means either a public school under the authority and control of the Board or a charter school.

(15) "Superintendent" means the Superintendent of the District of Columbia Public Schools.

(16) "Teacher" means any person employed as a teacher by the Board or by a charter school. (May 29, 1996, D.C. Law 11-135, § 101, 43 DCR 1699.)

Legislative history of Law 11-135. — Law 11-135, the "Public Charter Schools Act of 1996," was introduced in Council and assigned Bill No. 11-318, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings

on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 26, 1996, it was assigned Act No. 11-243 and transmitted to both Houses of Congress for its review. D. C. Law 11-135 became effective on May 29, 1996.

§ 31-2802. Findings.

The Council of the District of Columbia finds that:

(1) Encouraging educational excellence is in the best interest of the residents of the District of Columbia.

(2) Educational excellence may be fostered when schools compete for students, when teachers can choose where to teach, and when each school entity has control over its administration, operations, and expenditures.

(3) The District of Columbia has educators, members of the community, parents, and teachers who can offer innovative educational techniques and programs through independent means.

(4) Parents and teachers associated with individual public schools must be involved in developing strategies to improve student performance.

(5) Simultaneous top-down and bottom-up education reform is necessary to spur creative and innovative approaches by individual public schools to help all students achieve nationally and internationally competitive standards.

(6) Strategies must be developed for revitalization of public schools in the District of Columbia by fundamentally changing the system of public education through comprehensive, coherent, and coordinated improvement towards the objective of increasing student learning and providing all students with effective mechanisms and appropriate paths to the work force and to higher education.

(7) The public schools must be provided with an option for more autonomy over their administration, operations, and expenditures, but must be held accountable for the manner in which they exercise that autonomy.

(8) The appropriate and innovative use of technology can be very effective in helping to provide all students with the opportunity to meet high standards of learning that are nationally and internationally competitive.

(9) The establishment of charter schools in the District of Columbia will provide new public education options and provide students, educators, teachers, community members, and parents the incentive to strive for educational excellence. (May 29, 1996, D.C. Law 11-135, § 102, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2803. Purposes.

The purposes of this subchapter are to:

(1) Improve the quality of learning by creating schools that are nationally and internationally competitive in terms of student performance and curriculum standards;

(2) Increase learning opportunities for all students;

(3) Encourage diverse approaches in learning and education, including appropriate and innovative use of technology;

(4) Stimulate the use and development of different and innovative teaching methods designed to achieve student performance and curriculum standards specified in a school's charter and measured by standardized tests or assessments administered by the Board or the Superintendent;

(5) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program used by a charter school;

(6) Provide parents and students with expanded choices in the types of public educational opportunities available in the District of Columbia;

(7) Hold charter schools and their teachers accountable for achieving student performance levels specified in their school charter;

(8) Provide public schools with a method to change from the traditional rule-based to performance-based accountability systems; and

(9) Offer the community the option of independent public schools that are free of most statutes, rules, and regulations governing public education, as long as these schools meet the requirements of this chapter. (May 29, 1996, D.C. Law 11-135, § 103, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

Subpart B. Establishment of Charters.

§ 31-2811. **Chartering authority.**

(a) The Board shall have the authority to approve petitions to establish charter schools and renew charters. The Board may approve not more than 10 petitions in any calendar year. In considering a petition to establish a charter school, the Board shall strictly adhere to the following provisions:

(1) Each charter shall be limited to a period of 5 years but may be renewed for an unlimited number of additional 5-year periods.

(2) The Board shall approve a charter if the petition conforms with the provisions of this chapter.

(3) The Board shall give strong preference to an application which focuses on students with special needs, such as students who have dropped out of school, disruptive students, and learning disabled students.

(4) Except where specific educational or academic benefits are shown for the location of a charter school in places such as the Smithsonian Institute, the National Zoo, or the Air and Space Museum, or any other place outside an existing school's facility, the Board shall give preference to charter schools proposed to be established within existing public school facilities.

(5) The Board shall not condition its approval or denial of a petition or application to renew on the petitioner's or applicant's general or specific compliance with statutes, policies, rules, and regulations to which public schools under the authority of the Board are subject.

(6) If the Board denies a petition to establish a charter school or an application to renew a charter, it shall specify in writing the reasons for its decision and indicate how the applicant may appeal the denial or revise the application or petition to satisfy the requirements for approval.

(7) A petition to establish a charter school or an application to renew a charter shall be deemed approved 60 days after the petition or the application has been certified as complete by the Superintendent.

(b) The Board shall deny the renewal of a charter if:

(1) The school has committed a material violation of the conditions, terms, standards, or procedures set forth in its charter;

(2) The school has failed to meet the goals and student academic achievement expectations set forth in the charter; or

(3) The renewal application fails to comply with the requirements of §§ 31-2812 and 31-2813.

(c) If the Board denies a petition to establish a charter school or an application to renew a charter, the Council, upon a request by the applicant, may review the petition or application and by resolution, approve or disapprove the petition or application. The decision of the Council shall be final and not subject to judicial review.

(d) A private or religiously affiliated school shall not be granted a charter. (May 29, 1996, D.C. Law 11-135, § 201, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2812. Charter petition.

(a) An applicant seeking to establish a charter school shall prepare a petition providing the following information and documents:

(1) A statement defining the mission and goals of the proposed charter school;

(2) A statement of the need for the proposed charter school in the geographic area of the school site;

(3) A description of the proposed instructional goals and methods for the school, which, at a minimum, shall include teaching and classroom instruction methods that will be used to provide students with the knowledge, proficiency, and skills needed for economic productivity, self-motivation, and competitive performance in any assessments adopted by the Board or developed and administered by the Superintendent;

(4) A plan for evaluating student academic achievement at the proposed charter school and the procedures for remedial action that will be used by the school when the academic achievement of a student falls below acceptable standards;

(5) An operating budget for the first 2 years of the proposed charter school that is based on anticipated enrollment;

(6) A description of the method for conducting annual audits of the financial, administrative, and program operations of the school;

(7) An identification of the site where the school will be located, including a description of buildings to be used and any buildings proposed to be constructed on the site;

(8) A description of any planned or proposed contracts with a value equal to or exceeding \$10,000 for equipments, services, leases, improvements, purchases of real property, or insurance;

(9) A timetable for commencing operations as a charter school;

(10) A description of the proposed rules and policies for governance and operation of the school;

(11) Copies of the proposed articles of incorporation and bylaws of the school;

(12) The names and addresses of the members of the proposed Board of Trustees, if known at the time of the application;

(13) A description of the anticipated student enrollment, and the admission, suspension, and expulsion policies and procedures of the proposed charter school;

(14) A description of the procedures the school plans to follow to ensure the health and safety of students, employees, and guests of the school, and to comply with applicable health and safety laws and regulations of the federal government and the District of Columbia government;

(15) An explanation of the qualifications required of employees of the proposed charter school; and

(16) An identification and description of the individuals and entities submitting the application, including their names and addresses, and the names of the organizations or corporations of which the individuals are directors or officers.

(b) An applicant seeking to convert an existing District of Columbia public school under the authority and control of the Board into a charter school shall:

(1) Prepare a petition to establish a charter school that meets the requirements of subsection (a) of this section;

(2) Provide a copy of the petition to the following:

(A) Parents of minor students attending the existing school;

(B) Adult students attending the existing school; and

(C) Employees of the existing school;

(3) Have the petition signed by the following:

(A) A majority of parents of minor students attending the school; and

(B) A majority of adult students attending the school;

(4) Have the petition endorsed by a majority of full-time teachers at the school; and

(5) Explain in the petition the relationship that shall exist between the proposed charter school and its employees.

(c) The applicant shall submit the petition to the Superintendent. The Superintendent shall establish a schedule for receiving petitions or applications to renew charters previously granted and shall publish any such schedule in the District of Columbia Register.

(d) An applicant seeking to renew a charter shall submit a renewal application to the Superintendent not later than 120 days before the expiration of the charter. The application to renew a charter shall contain the following:

(1) A report on the progress of the charter school in achieving the goals, student academic achievement expectations, and other terms of the approved charter; and

(2) All audited financial statements for the charter school for the preceding 4 years. (May 29, 1996, D.C. Law 11-135, § 202, 43 DCR 1699.)

Section references. — This section is referred to in § 31-2811.

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2813. Approval of charter petitions or renewal applications.

(a) For the purposes of this section, the term “application” means a petition to establish a charter school or an application to renew a charter.

(b) Within 14 days after its submission, the Superintendent shall certify an application for completeness and technical sufficiency. If the application is deficient, the Superintendent shall request the applicant to provide information necessary to correct the deficiency and may provide reasonable assistance for that purpose. An application shall be deemed completed and technically sufficient for action by the Board 60 days after its submission to the Superintendent.

(c) Not later than 30 days after an application has been certified by the Superintendent, the Board shall hold a public hearing on the application to gather the information necessary to approve or deny the application. The Board shall publish a notice of the hearing in the District of Columbia Register

and send a written notice of the hearing to the applicant not later than 10 days before the hearing.

(d) Not later than 30 days after the hearing, the Board shall approve an application if the application satisfies the requirements of this act, the Board determines that it is reasonable to expect that the applicant who filed the petition has the capacity to implement the education plan described in the petition, and the applicant agrees to satisfy any condition or requirement, consistent with this act and any other applicable law, that may be set forth in writing by the Board as an amendment to the application.

(e) Not later than 10 days after the approval of an application, the Board shall provide written notice of the approval, including a copy of the approved application and any conditions or requirements, to the applicant, the Mayor, the Council, the Chief Financial Officer, and in a control year, the Authority. The Board shall also publish a notice of the approval in the District of Columbia Register.

(f) The provisions of an approved application or renewal thereof, including any amendments, shall be considered a charter granted to the school.

(g) Charters shall be modified by the same procedure and based on the same criteria as when the charter was approved. (May 29, 1996, D.C. Law 11-135, § 203, 43 DCR 1699.)

Section references. — This section is referred to in § 31-2811.

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2814. Federal agencies.

The Board may request federal agencies and federally-established institutions to explore the feasibility of establishing charter schools in the District of Columbia. (May 29, 1996, D.C. Law 11-135, § 204, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2815. Duties and responsibilities of charter schools.

(a) A charter school shall comply with all the terms and provisions of its charter and shall be considered a public school for all purposes except as otherwise provided in this subchapter.

(b) A charter school shall have all of the powers necessary for carrying out its charter, including the following:

(1) To adopt a name and corporate seal, but the name selected shall include the words “charter school”;

(2) To acquire real property for use as its school facility, from public or private sources;

(3) To receive and disburse funds for school purposes;

(4) To secure appropriate insurance and to make contracts and leases, including agreements to procure or purchase services, equipment, and supplies subject to the provisions of this subchapter;

(5) To incur debt in reasonable anticipation of the receipt of funds from the District of Columbia General Fund, or the receipt of other federal or private funds;

(6) To solicit and accept any grants or gifts for school purposes according to applicable laws and the terms of its charter, but the school must maintain separate accounts for such grants or gifts for financial reporting purposes;

(7) To be responsible for its own operation, including preparation of a budget and personnel matters; and

(8) To sue and be sued in its own name.

(c) Except in the case of an emergency, with respect to any contract to be awarded by a charter school and having a value equal to or exceeding \$10,000, the school shall publish a notice of a request for proposals in the District of Columbia Register not less than 30 days prior to the award of the contract. In a control year, the school shall submit to the Authority, not later than 3 days after the award of the contract, any contract required to be submitted to the Authority. The contract shall become effective after approval by the Authority or the effective date specified in the contract, whichever is later.

(d) Except for nonresident students, a charter school shall not charge tuition, fees, or other mandatory payments for participation in any program, educational offering, or activity for students enrolled in any grade from kindergarten through grade 12 or that is funded in whole or in part through an annual appropriation; provided, however, that a charter school may charge tuition, fees, or other mandatory payments at rates established by the Board of Trustees of the charter school for any program, educational offering, or activity that is fee-based in public schools under control and authority of the Board.

(e) A charter school shall exercise exclusive control over its expenditures, administration, personnel, and instructional methods, within the limitations imposed in this subchapter, and shall be exempt from statutes, policies, rules, and regulations established by the Superintendent, the Board, the Mayor, or the Council for public schools under the control and authority of the Board, except as otherwise provided in this subchapter or in the school's charter.

(f)(1) A charter school shall be governed by a Board of Trustees in a manner consistent with the charter granted to the school, the provisions of this subchapter, and any other law applicable to the school.

(2) Within 30 days of receipt of a charter, the Board of Trustees of a charter school shall seek accreditation, and, once obtained, shall maintain accreditation, from one of the following:

(A) The Middle States Association of College and Schools;

(B) The Southern Association of Colleges and Schools;

(C) The American Montessori Internationale;

(D) The National Academy of Early Childhood Programs;

(E) The American Montessori Society; or

(F) Any other accrediting body deemed appropriate by the Board.

(3) If the Educational program of a charter school includes pre-school or pre-kindergarten, within 30 days of receipt of the charter, the Board of Trustees of a charter school shall seek to be licensed as a child development

center by the District of Columbia government and shall maintain such a license once it is obtained.

(g) No employee of the District of Columbia public schools may be required to accept employment with, or be assigned to, a charter school.

(h) No student enrolled in a District of Columbia public school under the authority and control of the Board may be required to attend a charter school.

(i) A charter school shall not levy taxes or issue bonds.

(j) A charter school shall submit, before September 16 of each year, a report to the Superintendent and, in a control year, to the Authority. The report shall not identify students by name and shall be open to public inspection upon request. The report shall include the following information:

(1) Student performance based upon any assessment methods adopted by the Board or developed and administered citywide by the Superintendent;

(2) Grade advancement for students enrolled in the charter school;

(3) Graduation rates, college admission test scores, and college admission rates of students of the school, if applicable;

(4) Types and amounts of parental involvement;

(5) Student enrollment as of September 15 and March 1 of each year, average daily student membership, and average daily student attendance;

(6) A financial statement approved by an independent certified public accountant; and

(7) A list of all donors and grantors that have contributed monetary or in-kind donations having a value equal to or exceeding \$500 during the year covered by the report.

(k) A charter school shall report to the Superintendent the annual student enrollment on a grade-by-grade basis, including students with special needs, in a manner and form prescribed by the Superintendent to administer the per capita public school funding formula.

(l) A charter school shall provide to the Board any other information on student enrollment necessary for the Board to comply with § 31-404, and any other applicable law relating to census of minors.

(m) A charter school shall establish a complaint resolution process.

(n) A charter school shall provide a program of education which shall include one or more of the following:

(1) Pre-school;

(2) Pre-kindergarten;

(3) Any grade or grades from kindergarten through 12th grade; or

(4) Adult community, continuing, and vocational education programs.

(o) A charter school shall not engage in any sectarian practices in its educational program, admissions policies, employment policies, or operations.

(p) A charter school shall be organized under Chapter 5 of Title 29, and shall not be deemed, considered, or construed to be an entity of the District of Columbia government.

(q) The incorporators and individual trustees of a charter school shall be immune from civil liability, both personally and professionally, for any act or omission within the scope of their official duties unless the act or omission constitutes gross negligence, an intentional tort, or is criminal in nature. This

provision shall not be construed to abrogate any immunity under common law. (May 29, 1996, D.C. Law 11-135, § 205, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2816. Board of Trustees of a charter school.

(a) Members of a Board of Trustees of a charter school shall be elected or selected pursuant to the charter granted to the school. The board shall have an odd number of members that does not exceed 7 out of which a majority shall be residents of the District of Columbia, and at least 2 shall be parents of students attending the school or, in the case of a new school granted a charter, at least 2 shall be parents of students or children who are eligible to attend and who enroll at the school.

(b) An individual shall be eligible for election or selection to the Board of Trustees of a charter school if the person is a teacher or staff member who is employed at the school, a parent of a student attending the school, or meets the selection or election qualifications set forth in the charter granted to the school.

(c) The Board of Trustees shall be a fiduciary to the school and shall set overall policy for the school. The Board of Trustees shall make final decisions on matters related to the operation of the school in compliance with the charter granted to the school, this subchapter, and any other applicable law. (May 29, 1996, D.C. Law 11-135, § 206, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2817. Admission, enrollment, and withdrawal.

(a) Enrollment in a charter school shall be open to all students who are residents of the District of Columbia and, if space is available, to nonresident students who remit the tuition.

(b) A charter school may not limit enrollment on the basis of intellectual or athletic ability, measures of achievement or aptitude, financial status, or physical or mental disability. A charter school may limit enrollment to specific grade levels or areas of focus of the school, such as mathematics, science, or the arts, where the limitation is consistent with the charter granted to the school.

(c) Where applications for enrollment exceed available space, students shall be admitted using a random selection process. Priority in enrollment shall be given to students, and their siblings, enrolled in the school at the time that the petition is granted, students who reside within the attendance boundaries of the school, and residents of the District of Columbia.

(d) A nonresident student enrolled in a charter school, where space is available, shall pay tuition to a charter school at the current nonresident tuition rate established by the Board for the type of program in which the student has enrolled.

(e) A student may withdraw from a charter school at any time and, if eligible, enroll in a public school under the authority and control of the Board.

(f) The principal of a charter school may expel or suspend a student from the school or impose other types of punishment based on criteria set forth in the charter granted to the school. The criteria shall state the specific forms of punishment, including suspension and expulsion, that may be imposed for specific types of student misconduct, and shall ensure fairness and equity in the imposition of punishment. Spanking and other forms of corporal punishment shall be prohibited, except that nothing in this section shall be construed as prohibiting charter school personnel from using reasonable force to defend themselves against physical assault by the students. (May 29, 1996, D.C. Law 11-135, § 207, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2818. Employees.

(a) The Superintendent shall grant, upon request, an extended leave of absence, without pay, to an employee of the District of Columbia Public Schools for the purpose of permitting the employee to accept a position at a charter school for a 2-year term. The Superintendent may not unreasonably withhold approval of the request.

(b) An employee of the District of Columbia public schools who is granted an extended leave of absence, without pay, to accept a position at a charter school, may return to active employment with the District of Columbia public schools under terms and conditions that are in accordance with Board rules and regulations in effect at the time of his or her projected re-employment governing employee returns from extended leave of absence.

(c) An employee of a charter school who has received a leave of absence under this section shall receive creditable service, as defined in § 1-627.4, and the rules established under that section, for the period of the employee's employment at the charter school.

(d) Notwithstanding any other provision of law, employees of charter schools shall not be considered to be employees of the District of Columbia public schools or the District of Columbia government. (May 29, 1996, D.C. Law 11-135, § 208, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2819. Monitoring.

(a) The Superintendent shall monitor, assess, and evaluate the operations of each charter school to determine the extent to which the school complies with its charter and applicable local and federal laws, and the extent to which the school is meeting or making satisfactory progress toward meeting student academic achievement expectations specified in the school's charter and the minimum academic standard required for District of Columbia public schools.

(b) The Superintendent may require a charter school to produce any book, record, paper, or document if the Superintendent determines that the production is necessary to carry out his functions under this chapter.

(c) The Superintendent may charge a fee, not to exceed \$150, for processing a petition to establish a charter school or renew an existing charter.

(d) The Superintendent may charge each public charter school an administrative fee, not to exceed $\frac{1}{2}$ of 1% of the annual budget of the school, to cover the cost of undertaking administrative, monitoring, assessment, and evaluation responsibilities as prescribed by this subchapter. (May 29, 1996, D.C. Law 11-135, § 209, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2820. Revocation of charter.

(a) Upon the recommendation of the Superintendent, the Board may, at any time, revoke the charter if it determines that the school has committed a violation of applicable law or a material violation of its charter.

(b) The Board shall revoke the charter if it determines that the school:

(1) Has engaged in a pattern of nonadherence to generally accepted accounting principles;

(2) Has engaged in a pattern of fiscal mismanagement;

(3) Is no longer economically viable;

(4) Is not making satisfactory progress toward meeting student achievement expectations specified in the school's charter; or

(5) Does not meet the minimum academic standards required for District of Columbia public schools.

(c) If the Board decides to revoke a charter, the Board shall comply with the following procedures:

(1) The Board shall provide a written notice of its pending action to the Board of Trustees of the charter school to which the proposed revocation is directed. The notice shall state in reasonable detail the basis for the proposed revocation, and shall inform the Board of Trustees of the charter school of the right to a formal hearing to appeal the proposed revocation.

(2) Not later than 15 days after receipt of a notice of a proposed charter revocation, the Board of Trustees of a charter school may request, in writing, a formal hearing before the Board to appeal the proposed charter revocation.

(3) The Board shall hold a hearing not later than 20 days after the receipt of a written request for a formal hearing. The Board shall provide a hearing notice of not less than 7 days to the Board of Trustees of the charter school. The notice shall include the time, date, and location of the hearing, the procedures to be followed at the hearing, and the data, information, and documents to be provided by the Board of Trustees or to be reviewed at the formal hearing.

(4) The Board shall render, in writing, a final decision on the proposed revocation appeal not later than 10 days after the date of the formal hearing. If the Board denies the appeal, it shall state in reasonable detail the basis for its decision.

(d) If the Board determines that a charter should be revoked, the Board shall manage the charter school from the date of the final revocation until the end of the current school year or until alternative arrangements can be made to enroll students at other schools.

(e) If the Board determines that a charter should be revoked, the Council, upon a request by the Board of Trustees, may review the petition or application, and by a resolution, approve or disapprove the revocation. The Council's decision shall be final and not subject to judicial review. (May 29, 1996, D.C. Law 11-135, § 210, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2821. Reduced fares for public transportation.

Students attending charter schools shall be eligible for reduced fares on the District of Columbia public transit system on the same terms and conditions as students attending District of Columbia public schools, as provided in §§ 44-216 through 44-221. (May 29, 1996, D.C. Law 11-135, § 211, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2822. District of Columbia public school services.

The Superintendent may provide services such as a health benefits plan, budgeting, accounting, transportation of disabled students, and facilities maintenance to charter schools. All compensation for the costs of such services shall be subject to negotiation and mutual agreement between a charter school and the Superintendent. (May 29, 1996, D.C. Law 11-135, § 212, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2823. Application of laws.

(a) For the purposes of this subchapter, each public charter school shall be considered a local education agency and shall be eligible for the same federal financial assistance as public schools under the authority and control of the Board.

(b) A charter school shall be exempt from District of Columbia property and sales taxes.

(c) Except as otherwise provided in this subchapter, a charter school shall be subject to all statutes, policies, rules, and regulations established by the District of Columbia that are applicable to nonprofit corporations. (May 29, 1996, D.C. Law 11-135, § 213, 43 DCR 1699.)

Section references. — This section is referred to in § 31-2829.

Legislative history of Law 1-135. — See note to § 31-2801.

§ 31-2824. Annual budgets for public schools.

(a) For Fiscal Year 1997 and for each subsequent fiscal year, the Mayor shall recommend, and the Council shall approve, annual appropriated funds budgets for the District of Columbia public schools and for charter schools in accordance with the formula established by subsection (b) of this section.

(b) The Mayor, the Council, and the Board shall establish a funding formula which determines the amount of the annual appropriation for public schools under the Board's control, and for each charter school. The funding formula shall be based on the number of students enrolled at each school, as calculated by § 31-2826, and shall define and then take into consideration students with special needs, including students with learning, mental, or physical disabilities, disruptive students, or students who have dropped out of school. (May 29, 1996, D.C. Law 11-135, § 214, 43 DCR 1699.)

Section references. — This section is referred to in §§ 31-2827 and 31-2828.

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2825. Development of zero-based budget request and school-by-school gross operating budgets.

The Board shall develop its revised FY 1997 gross operating budget and its FY 1998 appropriated funds budget request as follows:

(1) By no later than June 1, 1996, the Board shall develop, approve, and submit to the Mayor, the Council, the Authority, and the Congress, a revised FY 1997 gross operating budget that reflects the Congressionally approved FY 1996 appropriation. The revised FY 1996 gross operating budget shall be on the basis of appropriated funds and nonappropriated funds, control center, responsibility center, agency reporting code, object class, and object, and shall indicate by position title, grade, and agency reporting code all staff actually allocated to each school as of October 15, 1995, and on an object basis all other-than-personnel-services financial resources allocated to each school.

(2) For FY 1998, the Board shall build its gross operating budget and appropriated funds request from a zero-base, starting from the local school level up through central office. The Board's initial FY 1998 gross operating budget and appropriated funds budget request submitted to the Mayor, the Council, and the Authority shall contain school-by-school budgets. The revised FY 1998 gross operating budget shall be broken out on the basis of appropriated funds and nonappropriated funds, control center, responsibility center, agency reporting code, object class, and object, shall indicate by position title, grade, and agency reporting code, all staff actually allocated to each school and on an object basis all other-than-personnel-services financial resources allocated to each school, and shall indicate the amount and reason for all changes made to the initial FY 1997 gross operating budget and appropriated funds request from the revised FY 1997 gross operating budget. (May 29, 1996, D.C. Law 11-135, § 215, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2826. Calculation of number of students.

(a) Not later than 30 days after the enactment of this subchapter, and not later than October 15 of each year thereafter, the Board shall prepare and submit to the Mayor, the Council, and, in a control year, the Authority a report containing designations by race or ethnic group, gender, learning, or mental, and physical disabilities, drop-out rates, and other special needs:

(1) Number of students, including nonresident students, enrolled in kindergarten through grade 12 in the District of Columbia public schools and in charter schools and the number of students, regardless of age or grade, whose tuition for enrollment in other schools is paid for by funds available to the District of Columbia public schools;

(2) Amount of fees and tuition assessed and collected from the nonresident students described in paragraph (1) of this subsection;

(3) Number of students, including nonresident students, enrolled in pre-school and pre-kindergarten in the District of Columbia public schools and in charter schools;

(4) Amount of fees and tuition assessed and collected from the nonresident students described in paragraph (3) of this subsection;

(5) Number of full-time equivalent adult students enrolled in adult, community, continuing, and vocational education programs in the District of Columbia public schools and in charter schools;

(6) Amount of tuition and fees assessed and collected from resident and nonresident adult students described in paragraph (5) of this subsection;

(7) Number of students, including nonresident students, enrolled in nongrade level programs in the District of Columbia Public Schools and in charter schools; and

(8) Amount of fees and tuition assessed and collected from nonresident students described in paragraph (7) of this subsection.

(b)(1) The District of Columbia Auditor shall conduct an audit of the initial annual report on student enrollment required by subsection (a) of this section.

(2) The audit of the initial annual report on student enrollment shall:

(A) Provide an opinion as to the accuracy of the information contained in the initial annual report on student enrollment required by subsection (a) of this section; and

(B) Identify any material weaknesses in the systems, procedures, or methodology used by the Board in determining the number of students, including nonresident students, enrolled in the District of Columbia Public Schools and in charter schools, and the number of students whose tuition for enrollment in other schools is paid for by funds available to the District of Columbia Public Schools, and in assessing and collecting fees and tuition from nonresident students.

(3) Not later than 45 days after the date on which the District of Columbia Auditor receives the initial annual report from the Board pursuant to subsection (a) of this section, the Auditor shall submit to the Mayor, the Council, and, in a control year, the Authority the audit conducted under this subsection. (May 29, 1996, D.C. Law 11-135, § 216, 43 DCR 1699.)

Section references. — This section is referred to in §§ 31-2824 and 31-2828.

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2827. Fiscal Year 1996 payments to charter schools.

(a) For the purpose of assisting charter schools to begin operations in the 1996 fall semester, the Congress of the United States is hereby asked to appropriate \$200,000 in federal funds in Fiscal Year 1996. This appropriation shall be placed into a restricted fund account within the District of Columbia General Fund, from which payments shall be made only to charter schools that begin operations before October 1, 1996.

(b) If the Congress provides funding as requested in subsection (a) of this section, payments to a charter school in Fiscal Year 1996 shall be an amount equivalent to $\frac{1}{12}$ of total anticipated enrollment as set forth in the petition to establish the charter school multiplied by the per pupil cost as determined by the formula established pursuant to § 31-2824 or in the event that the formula has not been established, then by \$500 per student to the total anticipated enrollment. Payment shall be made not later than September 1, 1996, by electronic funds transfer from the restricted account within the District of Columbia General Fund to a bank account designated by each charter school.

(c) Any funds that remain in the restricted account for charter schools on September 30, 1996, shall revert to the District of Columbia General Fund. (May 29, 1996, D.C. Law 11-135, § 217, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

11-135. — Section 301 of D.C. Law 11-135 provided that this section shall not apply until the effective date of Congressional legislation

appropriating the requested federal funds, or until May 29, 1996, whichever is later.

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2828. Payments to charter schools.

(a) Not less than 10 calendar days after the date of the enactment of the annual District of Columbia Appropriations Act, beginning in Fiscal Year 1997, the total amount of funds appropriated for charter schools, pursuant to § 31-2824, shall be transferred into a restricted account within the District of Columbia General Fund, provided that any funds transferred shall only be expended by charter schools.

(b) By September 15th of each year, beginning in Fiscal Year 1997, each charter school shall report to the Mayor, the Council, the Board, and, in a control year, the Authority, the total number of students enrolled at the school in a format that meets the requirements of § 31-2826.

(c) The annual amount that shall be transferred to each charter school from the General Fund, beginning in Fiscal Year 1997, shall be equivalent to the total number of enrolled students, as reported by the Board pursuant to § 31-2826, multiplied by the average cost per student, as determined by the per capita school funding formula prescribed in § 31-2824.

(d) On October 15, 1996, and on October 15 of each year thereafter, or not later than 10 calendar days after the enactment of the annual District of Columbia Appropriations Act, whichever occurs later, payments from the

General Fund shall be made to each charter school by electronic funds transfer to a bank account designated by the school in an amount equivalent to 75% of the annual payment that each school is to receive, as determined by this section.

(e) By March 1, 1997, and by March 1 of each year thereafter, each charter school shall report to the Mayor, the Council, the Board, and, in a control year, the Authority, the total number of students who have withdrawn from, or dropped out of, the school since the beginning of the school year, and the total number of students who have enrolled after September 15, in the same format as prescribed by § 31-2826.

(f) On May 1, 1997, and on May 1 of each year thereafter, or not later than 10 calendar days after the enactment of the annual District of Columbia Appropriations Act, whichever occurs later, each charter school shall receive the balance of its annual payment. The payment to each school shall be reduced in an amount equivalent to 50% of the per student allocation for each student who has withdrawn from, or dropped out of, the school and has not been replaced by a newly enrolled student since the beginning of the school year.

(g) If the overall annual appropriation for public schools is reduced during a fiscal year, a pro rata reduction shall be deducted from the balance of the annual payment to each charter school and from the reserve account established to fund charter schools within the General Fund.

(h) Any funds that remain in charter schools accounts on September 30 of a fiscal year shall revert to the District of Columbia General Fund. (May 29, 1996, D.C. Law 11-135, § 218, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

§ 31-2829. Federal grant funds.

Each public charter school may annually apply for and receive, on the same basis as public schools under the control and authority of the Board, federal financial assistance for which the public charter school may be eligible, in accordance with § 31-2823(a). (May 29, 1996, D.C. Law 11-135, § 219, 43 DCR 1699.)

Legislative history of Law 11-135. — See note to § 31-2801.

Subchapter II. District of Columbia School Reform.

§ 31-2851. General effective date.

Except as otherwise provided in this subchapter, this subchapter shall be effective during the period beginning on April 26, 1996 and ending 5 years after such date. (Apr. 26, 1996, 110 Stat. 1321 [226], Pub. L. 104-134, § 2003.)

Contracting Authority of District of Columbia Financial Responsibility and Management Assistance Authority. — Section 5201 of Pub. L. 104-208, 110 Stat. 3009 [1450], provided that:

“The District of Columbia Financial Responsibility and Management Assistance Authority (referred to in this section as the “Authority”) shall have the authority to contract with a private entity (or entities) to carry out a program of school facility repair of public schools and public charter schools located in public school facilities in the District of Columbia, in consultation with the General Services Administration: Provided, That an amount estimated to be \$40,700,000 is hereby transferred and otherwise made available to the Authority until expended for contracting as provided under this section, to be derived from transfers and reallocations as follows: (1) funds made available under the heading “PUBLIC EDUCATION SYSTEM” in Public Law 104-194 for school repairs in a restricted line item; (2) all capital

financing authority made available for public school capital improvements in Public Law 104-194; and (3) all capital financing authority made available for public school capital improvements which are or remain available from Public Law 104-134 or any previous appropriations Act for the District of Columbia: Provided further, That the General Services Administration, in consultation with the District of Columbia Public Schools and the District of Columbia Council and subject to the approval of the Authority and the Committees on Appropriations of the Senate and the House of Representatives, shall provide program management services to assist in the short-term management of the repairs and capital improvements: Provided further,

“That contracting authorized under this section shall be conducted in accordance with Federal procurement rules and regulations and guidelines or such guidelines as prescribed by the Authority.”

§ 31-2852. Definitions.

Except as otherwise provided, for purposes of this subchapter:

(1) *Appropriate congressional committees.* — The term “appropriate congressional committees” means:

(A) The Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate;

(B) The Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate; and

(C) The Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate.

(2) *Authority.* — The term “Authority” means the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.1(a).

(3) *Average daily attendance.* — The term “average daily attendance” means the aggregate attendance of students of the school during the period divided by the number of days during the period in which:

(A) The school is in session; and

(B) The students of the school are under the guidance and direction of teachers.

(4) *Average daily membership.* — The term “average daily membership” means the aggregate enrollment of students of the school during the period divided by the number of days during the period in which:

(A) The school is in session; and

(B) The students of the school are under the guidance and direction of teachers.

(5) *Board of Education.* — The term “Board of Education” means the Board of Education of the District of Columbia.

(6) *Board of Trustees.* — The term “Board of Trustees” means the governing board of a public charter school, the members of which are selected pursuant to the charter granted to the school and in a manner consistent with this subchapter.

(7) *Consensus Commission.* — The term “Consensus Commission” means the Commission on Consensus Reform in the District of Columbia public schools established under §§ 31-2853.81 through 31-2853.88.

(8) *Core Curriculum.* — The term “core curriculum” means the concepts, factual knowledge, and skills that students in the District of Columbia should learn in kindergarten through grade 12 in academic content areas, including, at a minimum, English, mathematics, science, and history.

(9) *District of Columbia Council.* — The term “District of Columbia Council” means the Council of the District of Columbia established pursuant to § 1-221.

(10) *District of Columbia Government.* —

(A) *In general.* — The term “District of Columbia Government” means the government of the District of Columbia, including:

(i) Any department, agency, or instrumentality of the government of the District of Columbia;

(ii) Any independent agency of the District of Columbia established under part F of Title IV of the District of Columbia Self-Government and Governmental Reorganization Act;

(iii) Any other agency, board, or commission established by the Mayor or the District of Columbia Council;

(iv) The courts of the District of Columbia;

(v) The District of Columbia Council; and

(vi) Any other agency, public authority, or public nonprofit corporation that has the authority to receive moneys directly or indirectly from the District of Columbia (other than moneys received from the sale of goods, the provision of services, or the loaning of funds to the District of Columbia).

(B) *Exception.* — The term “District of Columbia Government” neither includes the Authority nor a public charter school.

(11) *District of Columbia Government Retirement System.* — The term “District of Columbia Government retirement system” means the retirement programs authorized by the District of Columbia Council or the Congress for employees of the District of Columbia Government.

(12) *District of Columbia public school.* —

(A) *In general.* — The term “District of Columbia public school” means a public school in the District of Columbia that offers classes:

(i) At any of the grade levels from prekindergarten through grade 12; or

(ii) Leading to a secondary school diploma, or its recognized equivalent.

(B) *Exception.* — The term “District of Columbia public school” does not include a public charter school.

(13) *Districtwide assessments.* — The term “districtwide assessments” means a variety of assessment tools and strategies (including individual

student assessments under subparagraph (E)(ii) of this paragraph administered by the Superintendent to students enrolled in District of Columbia public schools and public charter schools that:

(A) Are aligned with the District of Columbia's content standards and core curriculum;

(B) Provide coherent information about student attainment of such standards;

(C) Are used for purposes for which such assessments are valid, reliable, and unbiased, and are consistent with relevant nationally recognized professional and technical standards for such assessments;

(D) Involve multiple up-to-date measures of student performance, including measures that assess higher order thinking skills and understanding; and

(E) Provide for:

(i) The participation in such assessments of all students;

(ii) Individual student assessments for students that fail to reach minimum acceptable levels of performance;

(iii) The reasonable adaptations and accommodations for students with special needs (as defined in paragraph (32) of this section) necessary to measure the achievement of such students relative to the District of Columbia's content standards; and

(iv) The inclusion of limited-English proficient students, who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information regarding such students' knowledge and abilities.

(14) *Electronic data transfer system.* — The term "electronic data transfer system" means a computer-based process for the maintenance and transfer of student records designed to permit the transfer of individual student records among District of Columbia public schools and public charter schools.

(15) *Elementary school.* — The term "elementary school" means an institutional day or residential school that provides elementary education, as determined under District of Columbia law.

(16) *Eligible applicant.* — The term "eligible applicant" means a person, including a private, public, or quasi-public entity, or an institution of higher education (as defined in § 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))), that seeks to establish a public charter school in the District of Columbia.

(17) *Eligible chartering authority.* — The term "eligible chartering authority" means any of the following:

(A) The Board of Education;

(B) The Public Charter School Board; or

(C) Any one entity designated as an eligible chartering authority by enactment of a bill by the District of Columbia Council after April 26, 1996.

(18) *Family resource center.* — The term "family resource center" means an information desk:

(A) Located in a District of Columbia public school or a public charter school serving a majority of students whose family income is not greater than

185 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with § 673(2) of the Community Services Block Grant Act applicable to a family of the size involved (42 U.S.C. 9902(3))); and

(B) Which links students and families to local resources and public and private entities involved in child care, adult education, health and social services, tutoring, mentoring, and job training.

(19) *Individual career path*. — The term “individual career path” means a program of study that provides a secondary school student the skills necessary to compete in the 21st century workforce.

(20) *Literacy*. — The term “literacy” means:

(A) In the case of a minor student, such student’s ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function in society, to achieve such student’s goals, and develop such student’s knowledge and potential; and

(B) In the case of an adult, such adult’s ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve such adult’s goals, and develop such adult’s knowledge and potential.

(21) *Long-term reform plan*. — The term “long-term reform plan” means the plan submitted by the Superintendent under § 31-2853.1.

(22) *Mayor*. — The term “Mayor” means the Mayor of the District of Columbia.

(23) *Metrobus and Metrorail Transit System*. — The term “Metrobus and Metrorail Transit System” means the bus and rail systems administered by the Washington Metropolitan Area Transit Authority.

(24) *Minor student*. — The term “minor student” means an individual who:

(A) Is enrolled in a District of Columbia public school or a public charter school; and

(B) Is not beyond the age of compulsory school attendance, as prescribed in §§ 31-401 and 31-402.

(25) *Nonresident student*. — The term “nonresident student” means:

(A) An individual under the age of 18 who is enrolled in a District of Columbia public school or a public charter school, and does not have a parent residing in the District of Columbia; or

(B) An individual who is age 18 or older and is enrolled in a District of Columbia public school or public charter school, and does not reside in the District of Columbia.

(26) *Parent*. — The term “parent” means a person who has custody of a child, and who:

(A) Is a natural parent of the child;

(B) Is a stepparent of the child;

(C) Has adopted the child; or

(D) Is appointed as a guardian for the child by a court of competent jurisdiction.

(27) *Petition*. — The term “petition” means a written application.

(28) *Promotion gate*. — The term “promotion gate” means the criteria, developed by the Superintendent and approved by the Board of Education, that are used to determine student promotion at different grade levels. Such criteria shall include student achievement on districtwide assessments established under §§ 31-2853.31 through 31-2853.36.

(29) *Public charter school*. — The term “public charter school” means a publicly funded school in the District of Columbia that:

(A) Is established pursuant to §§ 31-2853.11 through 31-2853.25; and

(B) Except as provided under §§ 31-2853.22(d)(5) and 31-2853.23(c)(5) is not a part of the District of Columbia public schools.

(30) *Public Charter School Board*. — The term “Public Charter School Board” means the Public Charter School Board established under § 31-2853.24.

(31) *Secondary school*. — The term “secondary school” means an institutional day or residential school that provides secondary education, as determined by District of Columbia law, except that such term does not include any education beyond grade 12.

(32) *Student with special needs*. — The term “student with special needs” means a student who is a child with a disability as provided in § 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)) or a student who is an individual with a disability as provided in § 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)).

(33) *Superintendent*. — The term “Superintendent” means the Superintendent of the District of Columbia public schools.

(34) *Teacher*. — The term “teacher” means any person employed as a teacher by the Board of Education or by a public charter school. (Apr. 26, 1996, 110 Stat. 1321 [226], Pub. L. 104-134, § 2002.)

References in text. — “Part F of Title IV of the District of Columbia Self-Government and Governmental Reorganization Act,” referred to in (10)(A)(ii), is Part F of Title IV of the Act of December 24, 1973, 87 Stat. 774, Pub. L. 93-198 which is codified as §§ 47-321 through 47-326.

Section 11717(b) of Title XI of Pub. L. 105-33,

111 Stat. 786 provided that any reference in law or regulation to the “District of Columbia Self-Government and Governmental Reorganization Act” shall be deemed to be a reference to the “District of Columbia Home Rule Act,” which is set out in Volume 1.

Subpart A. District of Columbia Reform Plan.

§ 31-2853.1. Long-term reform plan.

(a) *In General*. —

(1) *Plan*. — The Superintendent, with the approval of the Board of Education, shall submit to the Mayor, the District of Columbia Council, the Authority, the Consensus Commission, and the appropriate congressional committees, a long-term reform plan, not later than 90 days after April 26, 1996, and each February 15 thereafter. The long-term reform plan shall be consistent with the financial plan and budget for the District of Columbia for fiscal year 1996, and each financial plan and budget for a subsequent fiscal year, as the case may be, required under § 47-392.1.

(2) *Consultation.* —

(A) *In general.* — In developing the long-term reform plan, the Superintendent:

(i) Shall consult with the Board of Education, the Mayor, the District of Columbia Council, the Authority, and the Consensus Commission; and

(ii) Shall afford the public, interested organizations, and groups an opportunity to present their views and make recommendations regarding the long-term reform plan.

(B) *Summary of recommendations.* — The Superintendent shall include in the long-term plan a summary of the recommendations made under subparagraph (A)(ii) of this paragraph and the response of the Superintendent to the recommendations.

(b) *Contents.* —

(1) *Areas to be addressed.* — The long-term reform plan shall describe how the District of Columbia public schools will become a world-class education system that prepares students for lifetime learning in the 21st century and which is on a par with the best education systems of other cities, States, and nations. The long-term reform plan shall include a description of how the District of Columbia public schools will accomplish the following:

(A) Achievement at nationally and internationally competitive levels by students attending District of Columbia public schools;

(B) The preparation of students for the workforce, including:

(i) Providing special emphasis for students planning to obtain a postsecondary education; and

(ii) The development of individual career paths;

(C) The improvement of the health and safety of students in District of Columbia public schools;

(D) Local school governance, decentralization, autonomy, and parental choice among District of Columbia public schools;

(E) The implementation of a comprehensive and effective adult education and literacy program;

(F) The identification, beginning in grade 3, of each student who does not meet minimum standards of academic achievement in reading, writing, and mathematics in order to ensure that such student meets such standards prior to grade promotion;

(G) The achievement of literacy, and the possession of the knowledge and skills necessary to think critically, communicate effectively, and perform competently on districtwide assessments, by students attending District of Columbia public schools prior to such student's completion of grade 8;

(H) The establishment of after-school programs that promote self-confidence, self-discipline, self-respect, good citizenship, and respect for leaders, through such activities as arts classes, physical fitness programs, and community service;

(I) Steps necessary to establish an electronic data transfer system;

(J) Encourage parental involvement in all school activities, particularly parent teacher conferences;

(K) Development and implementation, through the Board of Education and the Superintendent, of a uniform dress code for the District of Columbia public schools, that:

(i) Shall include a prohibition of gang membership symbols;

(ii) Shall take into account the relative costs of any such code for each student; and

(iii) May include a requirement that students wear uniforms;

(L) The establishment of classes, beginning not later than grade 3, to teach students how to use computers effectively;

(M) The development of community schools that enable District of Columbia public schools to collaborate with other public and nonprofit agencies and organizations, local businesses, recreational, cultural, and other community and human service entities, for the purpose of meeting the needs and expanding the opportunities available to residents of the communities served by such schools;

(N) The establishment of programs which provide counseling, mentoring (especially peer mentoring), academic support, outreach, and supportive services to elementary, middle, and secondary school students who are at risk of dropping out of school;

(O) The establishment of a comprehensive remedial education program to assist students who do not meet basic literacy standards, or the criteria of promotion gates established in § 31-2853.36;

(P) The establishment of leadership development projects for middle school principals, which projects shall increase student learning and achievement and strengthen such principals as instructional school leaders;

(Q) The implementation of a policy for performance-based evaluation of principals and teachers, after consultation with the Superintendent and unions (including unions that represent teachers and unions that represent principals);

(R) The implementation of policies that require competitive appointments for all District of Columbia public school positions;

(S) The implementation of policies regarding alternative teacher certification requirements;

(T) The implementation of testing requirements for teacher licensing renewal;

(U) A review of the District of Columbia public school central office budget and staffing reductions for each fiscal year compared to the level of such budget and reductions at the end of fiscal year 1995; and

(V) The implementation of the discipline policy for the District of Columbia public schools in order to ensure a safe, disciplined environment conducive to learning.

(2) *Other information.* — For each of the items described in subparagraphs (A) through (V) of paragraph (1), the long-term reform plan shall include:

(A) A statement of measurable, objective performance goals;

(B) A description of the measures of performance to be used in determining whether the Superintendent and Board of Education have met the goals;

(C) Dates by which the goals shall be met;

(D) Plans for monitoring and reporting progress to District of Columbia residents, the Mayor, the District of Columbia Council, the Authority, the Consensus Commission, and the appropriate congressional committees regarding the carrying out of the long-term reform plan; and

(E) The title of the management employee of the District of Columbia public schools most directly responsible for the achievement of each goal and, with respect to each such employee, the title of the employee's immediate supervisor or superior.

(c) *Amendments.* — The Superintendent, with the approval of the Board of Education, shall submit any amendment to the long-term reform plan to the Mayor, the District of Columbia Council, the Authority, the Consensus Commission, and the appropriate congressional committees. Any amendment to the long-term reform plan shall be consistent with the financial plan and budget for fiscal year 1996, and each financial plan and budget for a subsequent fiscal year, as the case may be, for the District of Columbia required under § 47-392.1. (Apr. 26, 1996, 110 Stat. 1321 [231], Pub. L. 104-134, § 2101.)

Section references. — This section is referred to in §§ 31-2852 and 31-2853.84.

Expiration of §§ 2101(b)(1)(K), 2851(a)(2)(H) and 2854 of Public Law 104-134. — Section 2854(b) of Pub. L. 104-134, 110 Stat. 1321 [275], provides that

§§ 2101(b)(1)(K), 2851(a)(2)(H) and 2854 of the act shall cease to be effective on the last day of the 1997-1998 academic year. Sections 2101(b)(1)(K), 2851(a)(2)(H) and 2854 of Pub. L. 104-134 are codified as §§ 31-2853.1(b)(1)(K), 31-2853.81(a)(2)(H) and 31-2853.84.

§ 31-2853.2. Superintendent's report on reforms.

Not later than December 1, 1996, the Superintendent shall submit to the appropriate congressional committees, the Board of Education, the Mayor, the Consensus Commission, and the District of Columbia Council a report regarding the progress of the District of Columbia public schools toward achieving the goals of the long-term reform plan. (Apr. 26, 1996, 110 Stat. 1321 [234], Pub. L. 104-134, § 2102.)

§ 31-2853.3. District of Columbia Council report.

Not later than April 1, 1997, the Chairperson of the District of Columbia Council shall submit to the appropriate congressional committees a report describing legislative and other actions the District of Columbia Council has taken or will take to facilitate the implementation of the goals of the long-term reform plan. (Apr. 26, 1996, 110 Stat. 1321 [234], Pub. L. 104-134, § 2103.)

Subpart B. Public Charter Schools.

§ 31-2853.11. Process for filing charter petitions.

(a) *Existing public school.* — An eligible applicant seeking to convert a District of Columbia public school into a public charter school:

(1) Shall prepare a petition to establish a public charter school that meets the requirements of § 31-2853.12;

(2) Shall provide a copy of the petition to:

(A) The parents of minor students attending the existing school;

(B) Adult students attending the existing school; and

(C) Employees of the existing school; and

(3) Shall file the petition with an eligible chartering authority for approval after the petition:

(A) Is signed by two-thirds of the sum of:

(i) The total number of parents of minor students attending the school; and

(ii) The total number of adult students attending the school; and

(B) Is endorsed by at least two-thirds of full-time teachers employed in the school.

(b) *Private or independent school.* — An eligible applicant seeking to convert an existing private or independent school in the District of Columbia into a public charter school:

(1) Shall prepare a petition to establish a public charter school that is approved by the Board of Trustees or authority responsible for the school and that meets the requirements of § 31-2853.12;

(2) Shall provide a copy of the petition to:

(A) The parents of minor students attending the existing school;

(B) Adult students attending the existing school; and

(C) Employees of the existing school; and

(3) Shall file the petition with an eligible chartering authority for approval after the petition:

(A) Is signed by two-thirds of the sum of:

(i) The total number of parents of minor students attending the school; and

(ii) The total number of adult students attending the school; and

(B) Is endorsed by at least two-thirds of full-time teachers employed in the school.

(c) *New school.* — An eligible applicant seeking to establish in the District of Columbia a public charter school, but not seeking to convert a District of Columbia public school or a private or independent school into a public charter school, shall file with an eligible chartering authority for approval a petition to establish a public charter school that meets the requirements of § 31-2853.12.

(d) *Limitations on filing.* —

(1) *Multiple chartering authorities.* — An eligible applicant may not file the same petition to establish a public charter school with more than one eligible chartering authority during a calendar year.

(2) *Multiple petitions.* — An eligible applicant may not file more than one petition to establish a public charter school during a calendar year. (Apr. 26, 1996, 110 Stat. 1321 [234], Pub. L. 104-134, § 2201; Sept. 30, 1996, 110 Stat. 3009 [1461], Pub. L. 104-208, § 5205(a).)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.24.

Effect of amendments. — Pub. L. 104-208, added (d).

§ 31-2853.12. Contents of petition.

A petition under § 31-2853.11 to establish a public charter school shall include the following:

(1) A statement defining the mission and goals of the proposed school and the manner in which the school will conduct any districtwide assessments;

(2) A statement of the need for the proposed school in the geographic area of the school site;

(3) A description of the proposed instructional goals and methods for the proposed school, which shall include, at a minimum:

(A) The area of focus of the proposed school, such as mathematics, science, or the arts, if the school will have such a focus;

(B) The methods that will be used, including classroom technology, to provide students with the knowledge, proficiency, and skills needed:

(i) To become nationally and internationally competitive students and educated individuals in the 21st century; and

(ii) To perform competitively on any districtwide assessments; and

(C) The methods that will be used to improve student self-motivation, classroom instruction, and learning for all students;

(4) A description of the scope and size of the proposed school's program that will enable students to successfully achieve the goals established by the school, including the grade levels to be served by the school and the projected and maximum enrollment of each grade level;

(5) A description of the plan for evaluating student academic achievement at the proposed school and the procedures for remedial action that will be used by the school when the academic achievement of a student falls below the expectations of the school;

(6) An operating budget for the first 2 years of the proposed school that is based on anticipated enrollment and contains:

(A) A description of the method for conducting annual audits of the financial, administrative, and programmatic operations of the school;

(B) Either:

(i) An identification of the site where the school will be located, including a description of any buildings on the site and any buildings proposed to be constructed on the site; or

(I) An identification of a facility for the school, including a description of the site where the school will be located, any buildings on the site, and any buildings proposed to be constructed on the site; and

(II) Information demonstrating that the eligible applicant has acquired title to, or otherwise secured the use of, the facility; or

(ii) A timetable by which an identification described in subsubparagraph (i)(I) of this subparagraph will be made, and the information described in subsubparagraph (i)(II) of this subparagraph will be submitted, to the eligible chartering authority;

(C) A description of any major contracts planned, with a value equal to or exceeding \$10,000, for equipment and services, leases, improvements, purchases of real property, or insurance; and

(D) A timetable for commencing operations as a public charter school;

(7) A description of the proposed rules and policies for governance and operation of the proposed school;

(8) Copies of the proposed articles of incorporation and bylaws of the proposed school;

(9) The names and addresses of the members of the proposed Board of Trustees and the procedures for selecting trustees;

(10) A description of the student enrollment, admission, suspension, expulsion, and other disciplinary policies and procedures of the proposed school, and the criteria for making decisions in such areas;

(11) A description of the procedures the proposed school plans to follow to ensure the health and safety of students, employees, and guests of the school and to comply with applicable health and safety laws, and all applicable civil rights statutes and regulations of the Federal Government and the District of Columbia;

(12) An explanation of the qualifications that will be required of employees of the proposed school;

(13) An identification, and a description, of the individuals and entities submitting the petition, including their names and addresses, and the names of the organizations or corporations of which such individuals are directors or officers;

(14) A description of how parents, teachers, and other members of the community have been involved in the design and will continue to be involved in the implementation of the proposed school;

(15) A description of how parents and teachers will be provided an orientation and other training to ensure their effective participation in the operation of the public charter school;

(16) An assurance the proposed school will seek, obtain, and maintain accreditation from at least one of the following:

(A) The Middle States Association of Colleges and Schools;

(B) The Association of Independent Maryland Schools;

(C) The Southern Association of Colleges and Schools;

(D) The Virginia Association of Independent Schools;

(E) American Montessori Internationale;

(F) The American Montessori Society;

(G) The National Academy of Early Childhood Programs; or

(H) Any other accrediting body deemed appropriate by the eligible chartering authority that granted the charter to the school;

(17) In the case that the proposed school's educational program includes preschool or prekindergarten, an assurance the proposed school will be licensed as a child development center by the District of Columbia Government not later than the first date on which such program commences;

(18) An explanation of the relationship that will exist between the public charter school and the school's employees; and

(19) A statement of whether the proposed school elects to be treated as a local educational agency or a District of Columbia public school for purposes of Part B of the Individuals With Disabilities Education Act (20 U.S.C. 1411 et seq.) and § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and notwithstanding any other provision of law the eligible chartering authority shall not have the authority to approve or disapprove such election. (Apr. 26, 1996, 110 Stat. 1321 [235], Pub. L. 104-134, § 2202; Sept. 30, 1996, 110 Stat. 3009 [1461], Pub. L. 104-208, § 5205(b).)

Section references. — This section is referred to in §§ 31-2852, 31-2853.11, and 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.24.

Effect of amendments. — Pub. L. 104-208 rewrote (6)(B).

§ 31-2853.13. Process for approving or denying public charter school petitions.

(a) *Schedule.* — An eligible chartering authority shall establish a schedule for receiving petitions to establish a public charter school and shall publish any such schedule in the District of Columbia Register and newspapers of general circulation.

(b) *Public hearing.* — Not later than 45 days after a petition to establish a public charter school is filed with an eligible chartering authority, the eligible chartering authority shall hold a public hearing on the petition to gather the information that is necessary for the eligible chartering authority to make the decision to approve or deny the petition.

(c) *Notice.* — Not later than 10 days prior to the scheduled date of a public hearing on a petition to establish a public charter school, an eligible chartering authority:

(1) Shall publish a notice of the hearing in the District of Columbia Register and newspapers of general circulation; and

(2) Shall send a written notification of the hearing date to the eligible applicant who filed the petition.

(d) *Approval.* —

(1) *In general.* — Subject to subsection (i) of this section and paragraph (2) of this subsection an eligible chartering authority shall approve a petition to establish a public charter school, if:

(A) The eligible chartering authority determines that the petition satisfies the requirements of §§ 31-2853.11 through 31-2853.25;

(B) The eligible applicant who filed the petition agrees to satisfy any condition or requirement, consistent with §§ 31-2853.11 through 31-2853.25 and other applicable law, that is set forth in writing by the eligible chartering authority as an amendment to the petition;

(C) The eligible chartering authority determines that the public charter school has the ability to meet the educational objectives outlined in the petition; and

(D) The approval will not cause the eligible chartering authority to exceed a limit under subsection (i) of this section.

(2) *Conditional approval.* —

(A) *In general.* — In the case of a petition that does not contain the identification and information required under § 31-2853.12(6)(B)(i), but does contain the timetable required under § 31-2853.12(6)(B)(ii), an eligible chartering authority may only approve the petition on a conditional basis, subject to the eligible applicant's submitting the identification and information described in § 31-2853.12(6)(B)(i) in accordance with such timetable, or any other timetable specified in writing by the eligible chartering authority in an amendment to the petition.

(B) *Effect of conditional approval.* — For purposes of subsections (e), (h), (i), and (j) of this section, a petition conditionally approved under this paragraph shall be treated the same as a petition approved under paragraph (1) of this subsection except that on the date that such a conditionally approved petition ceases to be conditionally approved because the eligible applicant has not timely submitted the identification and information described in § 31-2853.12(6)(B)(i), the approval of the petition shall cease to be counted for purposes of subsection (i) of this section.

(e) *Timetable.* — An eligible chartering authority shall approve or deny a petition to establish a public charter school not later than 45 days after the conclusion of the public hearing on the petition.

(f) *Extension.* — An eligible chartering authority and an eligible applicant may agree to extend the 45-day time period referred to in subsection (e) of this section by a period that shall not exceed 30 days.

(g) *Denial explanation.* — If an eligible chartering authority denies a petition or finds the petition to be incomplete, the eligible chartering authority shall specify in writing the reasons for its decision and indicate, when the eligible chartering authority determines appropriate, how the eligible applicant who filed the petition may revise the petition to satisfy the requirements for approval.

(h) *Approved petition.* —

(1) *Notice.* — Not later than 10 days after an eligible chartering authority approves a petition to establish a public charter school, the eligible chartering authority shall provide a written notice of the approval, including a copy of the approved petition and any conditions or requirements agreed to under subsection (d) of this section, to the eligible applicant and to the Chief Financial Officer of the District of Columbia. The eligible chartering authority shall publish a notice of the approval of the petition in the District of Columbia Register and newspapers of general circulation.

(2) *Charter.* — The provisions described in paragraphs (1), (7), (8), (11), (16), (17), and (18) of § 31-2853.12 of a petition to establish a public charter school that are approved by an eligible chartering authority, together with any amendments to such provisions in the petition containing conditions or requirements agreed to by the eligible applicant under subsection (d) of this section, shall be considered a charter granted to the school by the eligible chartering authority.

(i) *Number of petitions.* —

(1) *First year.* — During calendar year 1996, not more than 10 petitions to establish public charter schools may be approved under §§ 31-2853.11 through 31-2853.25.

(2) *Subsequent years.* —(A) *In general.* —

(i) *Annual limit.* — Subject to subparagraph (B) of this paragraph and sub-subparagraph (ii) of this subparagraph, during calendar year 1997, and during each subsequent calendar year, each eligible chartering authority shall not approve more than 10 petitions to establish a public charter school under this subtitle.

(ii) *Timetable.* — Any petition approved under sub-subparagraph (i) of this subparagraph shall be approved during an application approval period that terminates on April 1 of each year. Such an approval period may commence before or after January 1 of the calendar year in which it terminates, except that any petition approved at any time during such an approval period shall count, for purposes of sub-subparagraph (i) of this subparagraph, against the total number of petitions approved during the calendar year in which the approval period terminates.

(B) *Exception.* — If, by April 1 of any calendar year after 1996, an eligible chartering authority has approved fewer than 10 petitions during such calendar year, any other eligible chartering authority may approve more than 10 petitions during such calendar year, but only if:

(i) The eligible chartering authority completes the approval of any such additional petition before June 1 of the year; and

(ii) The approval of any such additional petition will not cause the total number of petitions approved by all eligible chartering authorities during the calendar year to exceed 20.

(j) *Authority of eligible chartering authority.* —

(1) *In general.* — Except as provided in paragraph (2) of this subsection, and except for officers or employees of the eligible chartering authority with which a petition to establish a public charter school is filed, no governmental entity, elected official, or employee of the District of Columbia shall make, participate in making, or intervene in the making of, the decision to approve or deny such a petition.

(2) *Availability of review.* — A decision by an eligible chartering authority to deny a petition to establish a public charter school shall be subject to judicial review by an appropriate court of the District of Columbia. (Apr. 26, 1996, 110 Stat. 1321 [237], Pub. L. 104-134, § 2203; Sept. 30, 1996, 110 Stat. 3009 [1462], Pub. L. 104-208, § 5205(c); Nov. 19, 1997, 111 Stat. 2190, Pub. L. 105-100, § 167.)

Section references. — This section is referred to in §§ 31-2852 and 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.19, 31-2853.21, 31-2853.24.

Effect of amendments. — Public Law 104-

208 rewrote (d); in (h), substituted “(d)” for “(d)(2)” twice; and rewrote (i) and (j).

Section 167 of Pub. L. 105-100, 111 Stat. 2190, rewrote (i)(2)(A).

§ 31-2853.14. Duties, powers, and other requirements, of public charter schools.

(a) *Duties.* — A public charter school shall comply with all of the terms and provisions of its charter.

(b) *Powers.* — A public charter school shall have the following powers:

(1) To adopt a name and corporate seal, but only if the name selected includes the words “public charter school”;

(2) To acquire real property for use as the public charter school’s facilities, from public or private sources;

(3) To receive and disburse funds for public charter school purposes;

(4) Subject to subsection (c)(1) of this section, to secure appropriate insurance and to make contracts and leases, including agreements to procure or purchase services, equipment, and supplies;

(5) To incur debt in reasonable anticipation of the receipt of funds from the general fund of the District of Columbia or the receipt of Federal or private funds;

(6) To solicit and accept any grants or gifts for public charter school purposes, if the public charter school:

(A) Does not accept any grants or gifts subject to any condition contrary to law or contrary to its charter; and

(B) Maintains for financial reporting purposes separate accounts for grants or gifts;

(7) To be responsible for the public charter school’s operation, including preparation of a budget and personnel matters; and

(8) To sue and be sued in the public charter school’s own name.

(c) *Prohibitions and other requirements.* —

(1) *Contracting authority.* —

(A) *Notice requirement.* — Except in the case of an emergency (as determined by the eligible chartering authority of a public charter school), with respect to any contract proposed to be awarded by the public charter school and having a value equal to or exceeding \$10,000, the school shall publish a notice of a request for proposals in the District of Columbia Register and newspapers of general circulation not less than 30 days prior to the award of the contract.

(B) *Submission to the authority.* —

(i) *Deadline for submission.* — With respect to any contract described in subparagraph (A) of this paragraph that is awarded by a public charter school, the school shall submit to the Authority, not later than 3 days after the date on which the award is made, all bids for the contract received by the school, the name of the contractor who is awarded the contract, and the rationale for the award of the contract.

(ii) *Effective date of contract.* —

(I) *In general.* — Subject to clause (II) of this sub-subparagraph, a contract described in subparagraph (A) of this paragraph shall become effective on the date that is 15 days after the date the school makes the submission under sub-subparagraph (i) of this subparagraph with respect to the contract, or the effective date specified in the contract, whichever is later.

(II) *Exception.* — A contract described in subparagraph (A) of this paragraph shall be considered null and void if the Authority determines, within 12 days of the date the school makes the submission under sub-subparagraph (i) of this subparagraph with respect to the contract, that the contract endangers the economic viability of the public charter school.

(2) *Tuition, fees, and payments.* —

(A) *Prohibition.* — A public charter school may not, with respect to any student other than a nonresident student, charge tuition, impose fees, or otherwise require payment for participation in any program, educational offering, or activity that:

(i) Enrolls students in any grade from kindergarten through grade 12; or

(ii) Is funded in whole or part through an annual local appropriation.

(B) *Exception.* — A public charter school may impose fees or otherwise require payment, at rates established by the Board of Trustees of the school, for any program, educational offering, or activity not described in subsubparagraph (i) or (ii) of subparagraph (A), including adult education programs, or for field trips or similar activities.

(3) *Control.* — A public charter school:

(A) Shall exercise exclusive control over its expenditures, administration, personnel, and instructional methods, within the limitations imposed in §§ 31-2853.11 through 31-2853.25; and

(B) Shall be exempt from District of Columbia statutes, policies, rules, and regulations established for the District of Columbia public schools by the Superintendent, Board of Education, Mayor, District of Columbia Council, or Authority, except as otherwise provided in the school's charter or §§ 31-2853.11 through 31-2853.25.

(4) *Health and safety.* — A public charter school shall maintain the health and safety of all students attending such school.

(5) *Civil rights and idea.* — The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), shall apply to a public charter school.

(6) *Governance.* — A public charter school shall be governed by a Board of Trustees in a manner consistent with the charter granted to the school and the provisions of §§ 31-2853.11 through 31-2853.25.

(7) *Other staff.* — No employee of the District of Columbia public schools may be required to accept employment with, or be assigned to, a public charter school.

(8) *Other students.* — No student enrolled in a District of Columbia public school may be required to attend a public charter school.

(9) *Taxes or bonds.* — A public charter school shall not levy taxes or issue bonds.

(10) *Charter revision.* — A public charter school seeking to revise its charter shall prepare a petition for approval of the revision and file the petition

with the eligible chartering authority that granted the charter. The provisions of § 31-2853.13 shall apply to such a petition in the same manner as such provisions apply to a petition to establish a public charter school.

(11) *Annual report.* —

(A) *In general.* — A public charter school shall submit an annual report to the eligible chartering authority that approved its charter. The school shall permit a member of the public to review any such report upon request.

(B) *Contents.* — A report submitted under subparagraph (A) of this paragraph shall include the following data:

(i) A report on the extent to which the school is meeting its mission and goals as stated in the petition for the charter school;

(ii) Student performance on any districtwide assessments;

(iii) Grade advancement for students enrolled in the public charter school;

(iv) Graduation rates, college admission test scores, and college admission rates, if applicable;

(v) Types and amounts of parental involvement;

(vi) Official student enrollment;

(vii) Average daily attendance;

(viii) Average daily membership;

(ix) A financial statement audited by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General of the United States;

(x) A report on school staff indicating the qualifications and responsibilities of such staff; and

(xi) A list of all donors and grantors that have contributed monetary or in-kind donations having a value equal to or exceeding \$500 during the year that is the subject of the report.

(C) *Nonidentifying data.* — Data described in sub-subparagraphs (i) through (ix) of subparagraph (B) of this paragraph that are included in an annual report shall not identify the individuals to whom the data pertain.

(12) *Census.* — A public charter school shall provide to the Board of Education student enrollment data necessary for the Board of Education to comply with § 31-404.

(13) *Complaint resolution process.* — A public charter school shall establish an informal complaint resolution process.

(14) *Program of education.* — A public charter school shall provide a program of education which shall include one or more of the following:

(A) Preschool;

(B) Prekindergarten;

(C) Any grade or grades from kindergarten through grade 12;

(D) Residential education; or

(E) Adult, community, continuing, and vocational education programs.

(15) *Nonsectarian nature of schools.* — A public charter school shall be nonsectarian and shall not be affiliated with a sectarian school or religious institution.

(16) *Nonprofit status of school.* — A public charter school shall be organized under Chapter 5 of Title 29.

(17) *Immunity from civil liability.* —

(A) *In general.* — A public charter school, and its incorporators, Board of Trustees, officers, employees, and volunteers, shall be immune from civil liability, both personally and professionally, for any act or omission within the scope of their official duties unless the act or omission:

- (i) Constitutes gross negligence;
- (ii) Constitutes an intentional tort; or
- (iii) Is criminal in nature.

(B) *Common law immunity preserved.* — Subparagraph (A) of this paragraph shall not be construed to abrogate any immunity under common law of a person described in such subparagraph. (Apr. 26, 1996, 110 Stat. 1321 [238], Pub. L. 104-134, § 2204; Sept. 9, 1996, 110 Stat. 2356 [2376], Pub. L. 104-194, § 145.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.15, 31-2853.21, 31-2853.24.

Effect of amendments. — Public L. 104-194 rewrote (c)(2).

§ 31-2853.15. Board of Trustees of a public charter school.

(a) *Board of Trustees.* — The members of a Board of Trustees of a public charter school shall be elected or selected pursuant to the charter granted to the school. Such Board of Trustees shall have an odd number of members that does not exceed 15, of which:

- (1) A majority shall be residents of the District of Columbia; and
- (2) At least 2 shall be parents of a student attending the school.

(b) *Eligibility.* — An individual is eligible for election or selection to the Board of Trustees of a public charter school if the person:

- (1) Is a teacher or staff member who is employed at the school;
- (2) Is a parent of a student attending the school; or
- (3) Meets the election or selection criteria set forth in the charter granted to the school.

(c) *Election or selection of parents.* — In the case of the first Board of Trustees of a public charter school to be elected or selected after the date on which the school is granted a charter, the election or selection of the members under subsection (a)(2) of this section shall occur on the earliest practicable date after classes at the school have commenced. Until such date, any other members who have been elected or selected shall serve as an interim Board of Trustees. Such an interim Board of Trustees may exercise all of the powers, and shall be subject to all of the duties, of a Board of Trustees.

(d) *Fiduciaries.* — The Board of Trustees of a public charter school shall be fiduciaries of the school and shall set overall policy for the school. The Board of Trustees may make final decisions on matters related to the operation of the school, consistent with the charter granted to the school, §§ 31-2853.11 through 31-2853.25, and other applicable law. (Apr. 26, 1996, 110 Stat. 1321 [241], Pub. L. 104-134, § 2205; Nov. 19, 1997, 111 Stat. 2191, Pub. L. 105-100, § 168.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.21, 31-2853.24.

Effect of amendments. — Section 168 of

Pub. L. 105-100, 111 Stat. 2191 substituted “does not exceed 15” for “does not exceed 7” in the introductory paragraph of (a).

§ 31-2853.16. Student admission, enrollment, and withdrawal.

(a) *Open enrollment.* — Enrollment in a public charter school shall be open to all students who are residents of the District of Columbia and, if space is available, to nonresident students who meet the tuition requirement in subsection (e) of this section.

(b) *Criteria for admission.* — A public charter school may not limit enrollment on the basis of a student’s race, color, religion, national origin, language spoken, intellectual or athletic ability, measures of achievement or aptitude, or status as a student with special needs. A public charter school may limit enrollment to specific grade levels.

(c) *Random selection.* — If there are more applications to enroll in a public charter school from students who are residents of the District of Columbia than there are spaces available, students shall be admitted using a random selection process.

(d) *Admission to an existing school.* — During the 5-year period beginning on the date that a petition, filed by an eligible applicant seeking to convert a District of Columbia public school or a private or independent school into a public charter school, is approved, the school may give priority in enrollment to:

- (1) Students enrolled in the school at the time the petition is granted;
- (2) The siblings of students described in paragraph (1) of this subsection;

and

(3) In the case of the conversion of a District of Columbia public school, students who reside within the attendance boundaries, if any, in which the school is located.

(e) *Nonresident students.* — Nonresident students shall pay tuition to attend a public charter school at the applicable rate established for District of Columbia public schools administered by the Board of Education for the type of program in which the student is enrolled.

(f) *Student withdrawal.* — A student may withdraw from a public charter school at any time and, if otherwise eligible, enroll in a District of Columbia public school administered by the Board of Education.

(g) *Expulsion and suspension.* — The principal of a public charter school may expel or suspend a student from the school based on criteria set forth in the charter granted to the school. (Apr. 26, 1996, 110 Stat. 1321 [242], Pub. L. 104-134, § 2206.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.24.

§ 31-2853.17. Employees.

(a) *Extended leave of absence without pay.* —

(1) *Leave of absence from District of Columbia public schools.* — The Superintendent shall grant, upon request, an extended leave of absence, without pay, to an employee of the District of Columbia public schools for the purpose of permitting the employee to accept a position at a public charter school for a 2-year term.

(2) *Request for extension.* — At the end of a 2-year term referred to in paragraph (1) of this subsection, an employee granted an extended leave of absence without pay under such paragraph may submit a request to the Superintendent for an extension of the leave of absence for an unlimited number of 2-year terms. The Superintendent may not unreasonably (as determined by the eligible chartering authority) withhold approval of the request.

(3) *Rights upon termination of leave.* — An employee granted an extended leave of absence without pay for the purpose described in paragraph (1) or (2) of this subsection shall have the same rights and benefits under law upon termination of such leave of absence as an employee of the District of Columbia public schools who is granted an extended leave of absence without pay for any other purpose.

(b) *Retirement System.* —

(1) *Creditable service.* — An employee of a public charter school who has received a leave of absence under subsection (a) of this section shall receive creditable service, as defined in § 1-627.4 and the rules established under such section, for the period of the employee's employment at the public charter school.

(2) *Authority to establish separate system.* — A public charter school may establish a retirement system for employees under its authority.

(3) *Election of retirement system.* — A former employee of the District of Columbia public schools who becomes an employee of a public charter school within 60 days after the date the employee's employment with the District of Columbia public schools is terminated may, at the time the employee commences employment with the public charter school, elect:

(A) To remain in a District of Columbia Government retirement system and continue to receive creditable service for the period of their employment at a public charter school; or

(B) To transfer into a retirement system established by the public charter school pursuant to paragraph (2) of this subsection.

(4) *Prohibited employment conditions.* — No public charter school may require a former employee of the District of Columbia public schools to transfer to the public charter school's retirement system as a condition of employment.

(5) *Contributions.* —

(A) *Employees electing not to transfer.* — In the case of a former employee of the District of Columbia public schools who elects to remain in a District of Columbia Government retirement system pursuant to paragraph (3)(A) of this subsection the public charter school that employs the person shall

make the same contribution to such system on behalf of the person as the District of Columbia would have been required to make if the person had continued to be an employee of the District of Columbia public schools.

(B) *Employees electing to transfer.* — In the case of a former employee of the District of Columbia public schools who elects to transfer into a retirement system of a public charter school pursuant to paragraph (3)(B) of this subsection, the applicable District of Columbia Government retirement system from which the former employee is transferring shall compute the employee's contribution to that system and transfer this amount, to the retirement system of the public charter school.

(c) *Employment status.* — Notwithstanding any other provision of law and except as provided in this section, an employee of a public charter school shall not be considered to be an employee of the District of Columbia Government for any purpose. (Apr. 26, 1996, 110 Stat. 1321 [243], Pub. L. 104-134, § 2207.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.24.

§ 31-2853.18. Reduced fares for public transportation.

A student attending a public charter school shall be eligible for reduced fares on the Metrobus and Metrorail Transit System on the same terms and conditions as are applicable under §§ 44-216 through 44-221, to a student attending a District of Columbia public school. (Apr. 26, 1996, 110 Stat. 1321 [244], Pub. L. 104-134, § 2208.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.24.

§ 31-2853.19. District of Columbia public school services to public charter schools.

(a) *In general.* — The Superintendent may provide services, such as facilities maintenance, to public charter schools. All compensation for costs of such services shall be subject to negotiation and mutual agreement between a public charter school and the Superintendent.

(b) *Preference in leasing or purchasing public school facilities.* —

(1) *Former public school property.* —

(A) *In general.* — Notwithstanding any other provision of law relating to the disposition of a facility or property described in subparagraph (B) of this paragraph, the Mayor and the District of Columbia Government shall give preference to an eligible applicant whose petition to establish a public charter school has been conditionally approved under § 31-2853.13(d)(2), or a Board of Trustees, with respect to the purchase or lease of a facility or property described in subparagraph (B) of this paragraph, provided that doing so will not result in a significant loss of revenue that might be obtained from other dispositions or uses of the facility or property.

(B) *Property described.* — A facility or property referred to in subparagraph (A) of this paragraph is a facility, or real property:

(i) That formerly was under the jurisdiction of the Board of Education;

(ii) That the Board of Education has determined is no longer needed for purposes of operating a District of Columbia public school; and

(iii) With respect to which the Board of Education has transferred jurisdiction to the Mayor.

(2) *Current public school property.* —

(A) *In general.* — Notwithstanding any other provision of law relating to the disposition of a facility or property described in subparagraph (B) of this paragraph, the Mayor and the District of Columbia Government shall give preference to an eligible applicant whose petition to establish a public charter school has been conditionally approved under § 31-2853.13(d)(2), or a Board of Trustees, in leasing, or otherwise contracting for the use of, a facility or property described in subparagraph (B) of this paragraph.

(B) *Property described.* — A facility or property referred to in subparagraph (A) of this paragraph is a facility, real property, or a designated area of a facility or real property, that:

(i) Is under the jurisdiction of the Board of Education; and

(ii) Is available for use because the Board of Education is not using, for educational, administrative, or other purposes, the facility, real property, or designated area. (Apr. 26, 1996, 110 Stat. 1321 [244], Pub. L. 104-134, § 2209; Sept. 30, 1996, 110 Stat. 3009 [1466], Pub. L. 104-208, § 5205(d).)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.24.

Effect of amendments. — Public L. 104-208 added (b).

§ 31-2853.20. Application of law.

(a) *Elementary and Secondary Education Act of 1965.* —

(1) *Treatment as local educational agency.* —

(A) *In general.* — For any fiscal year, a public charter school shall be considered to be a local educational agency for purposes of Part A of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), and shall be eligible for assistance under such part, if the fraction the numerator of which is the number of low-income students enrolled in the public charter school during the fiscal year preceding the fiscal year for which the determination is made and the denominator of which is the total number of students enrolled in such public charter school for such preceding year, is equal to or greater than the lowest fraction determined for any District of Columbia public school receiving assistance under such Part A where the numerator is the number of low-income students enrolled in such public school for such preceding year and the denominator is the total number of students enrolled in such public school for such preceding year.

(B) *Definition.* — For the purposes of this subsection, the term “low-income student” means a student from a low-income family determined according to the measure adopted by the District of Columbia to carry out the

provisions of Part A of Title I of the Elementary and Secondary Education Act of 1965 that is consistent with the measures described in § 1113(a) (5) of such Act (20 U.S.C. 6313(a) (5)) for the fiscal year for which the determination is made.

(2) *Allocation for fiscal years 1996 through 1998.* —

(A) *Public charter schools.* — For fiscal years 1996 through 1998, each public charter school that is eligible to receive assistance under Part A of Title I of the Elementary and Secondary Education Act of 1965 shall receive a portion of the District of Columbia's total allocation under such part which bears the same ratio to such total allocation as the number described in subparagraph (C) of this paragraph bears to the number described in subparagraph (D) of this paragraph.

(B) *District of Columbia public schools.* — For fiscal years 1996 through 1998, the District of Columbia public schools shall receive a portion of the District of Columbia's total allocation under Part A of Title I of the Elementary and Secondary Education Act of 1965 which bears the same ratio to such total allocation as the total of the numbers described in subparagraphs (ii) and (iii) of subparagraph (D) bears to the aggregate total described in subparagraph (D) of this paragraph.

(C) *Number of eligible students enrolled in the public charter school.* — The number described in this subparagraph is the number of low-income students enrolled in the public charter school during the fiscal year preceding the fiscal year for which the determination is made.

(D) *Aggregate number of eligible students.* — The number described in this subparagraph is the aggregate total of the following numbers:

(i) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made, were enrolled in a public charter school.

(ii) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made, were enrolled in a District of Columbia public school selected to provide services under Part A of Title I of the Elementary and Secondary Education Act of 1965; and

(iii) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made:

(I) Were enrolled in a private or independent school; and

(II) Resided in an attendance area of a District of Columbia public school selected to provide services under Part A of Title I of the Elementary and Secondary Education Act of 1965.

(3) *Allocation for fiscal year 1999 and thereafter.* —

(A) *Calculation by secretary.* — Notwithstanding §§ 1124(a)(2), 1124A(a)(4), and 1125(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(a)(2), 6334(a)(4), and 6335(d)), for fiscal year 1999 and each fiscal year thereafter, the total allocation under Part A of Title I of such Act for all local educational agencies in the District of Columbia, including public charter schools that are eligible to receive assistance under such part, shall be calculated by the Secretary of Education. In making such calculation, such Secretary shall treat all such local educational agencies as if such agencies were a single local educational agency for the District of Columbia.

(B) *Allocation.* —

(i) *Public charter schools.* — For fiscal year 1999 and each fiscal year thereafter, each public charter school that is eligible to receive assistance under Part A of Title I of the Elementary and Secondary Education Act of 1965 shall receive a portion of the total allocation calculated under subparagraph (A) of this paragraph which bears the same ratio to such total allocation as the number described in paragraph (2)(C) of this subsection bears to the aggregate total described in paragraph (2)(D) of this subsection.

(ii) *District of Columbia public school.* — For fiscal year 1999 and each fiscal year thereafter, the District of Columbia public schools shall receive a portion of the total allocation calculated under subparagraph (A) of this paragraph which bears the same ratio to such total allocation as the total of the numbers described in subsubparagraphs (ii) and (iii) of paragraph (2)(D) of this subsection bears to the aggregate total described in paragraph (2)(D) of this subsection.

(4) *Use of ESEA funds.* — The Board of Education may not direct a public charter school in the school's use of funds under Part A of Title I of the Elementary and Secondary Education Act of 1965.

(5) *ESEA requirements.* — Except as provided in paragraph (6) of this subsection, a public charter school receiving funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) shall comply with all requirements applicable to schools receiving such funds.

(6) *Inapplicability of certain ESEA provisions.* — The following provisions of the Elementary and Secondary Education Act of 1965 shall not apply to a public charter school:

(A) Paragraphs (5) and (8) of § 1112(b) (20 U.S.C. 6312(b));

(B) Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), (1)(F), (1)(H), and (3) of § 1112(c) (20 U.S.C. 6312(c));

(C) Section 1113 (20 U.S.C. 6313);

(D) Section 1115A (20 U.S.C. 6316);

(E) Subsections (a), (b), and (c) of § 1116 (20 U.S.C. 6317);

(F) Subsections (d) and (e) of § 1118 (20 U.S.C. 6319);

(G) Section 1120 (20 U.S.C. 6321);

(H) Subsections (a) and (c) of § 1120A (20 U.S.C. 6322); and

(I) Section 1126 (20 U.S.C. 6337).

(b) *Property and sales taxes.* — A public charter school shall be exempt from District of Columbia property and sales taxes.

(c) *Education of Children With Disabilities.* — Notwithstanding any other provision of this subchapter, each public charter school shall elect to be treated as a local educational agency or a District of Columbia public school for the purpose of Part B of the Individuals With Disabilities Education Act (20 U.S.C. 1411 et seq.) and § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). (Apr. 26, 1996, 110 Stat. 1321 [244], Pub. L. 104-134, § 2210.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.24.

§ 31-2853.21. Powers and duties of eligible chartering authorities.

(a) *Oversight.* —

(1) *In general.* — An eligible chartering authority:

(A) Shall monitor the operations of each public charter school to which the eligible chartering authority has granted a charter;

(B) Shall ensure that each such school complies with applicable laws and the provisions of the charter granted to such school; and

(C) Shall monitor the progress of each such school in meeting student academic achievement expectations specified in the charter granted to such school.

(2) *Production of books and records.* — An eligible chartering authority may require a public charter school to which the eligible chartering authority has granted a charter to produce any book, record, paper, or document, if the eligible chartering authority determines that such production is necessary for the eligible chartering authority to carry out its functions under §§ 31-2853.11 through 31-2853.25.

(b) *Fees.* —

(1) *Application fee.* — An eligible chartering authority may charge an eligible applicant a fee, not to exceed \$150, for processing a petition to establish a public charter school.

(2) *Administration fee.* — In the case of an eligible chartering authority that has granted a charter to a public charter school, the eligible chartering authority may charge the school a fee, not to exceed one-half of one percent of the annual budget of the school, to cover the cost of undertaking the ongoing administrative responsibilities of the eligible chartering authority with respect to the school that are described in §§ 31-2853.11 through 31-2853.25. The school shall pay the fee to the eligible chartering authority not later than November 15 of each year.

(c) *Immunity from civil liability.* —

(1) *In general.* — An eligible chartering authority, the Board of Trustees of such an eligible chartering authority, and a director, officer, employee, or volunteer of such an eligible chartering authority, shall be immune from civil liability, both personally and professionally, for any act or omission within the scope of their official duties unless the act or omission:

(A) Constitutes gross negligence;

(B) Constitutes an intentional tort; or

(C) Is criminal in nature.

(2) *Common law immunity preserved.* — Paragraph (1) of this subsection shall not be construed to abrogate any immunity under common law of a person described in such paragraph.

(d) *Annual report.* — On or before July 30 of each year, each eligible chartering authority that issues a charter under §§ 31-2853.11 through 31-2853.25 shall submit a report to the Mayor, the District of Columbia Council, the Board of Education, the Secretary of Education, the appropriate congressional committees, and the Consensus Commission that includes the following information:

(1) A list of the members of the eligible chartering authority and the addresses of such members;

(2) A list of the dates and places of each meeting of the eligible chartering authority during the year preceding the report;

(3) The number of petitions received by the eligible chartering authority for the conversion of a District of Columbia public school or a private or independent school to a public charter school, and for the creation of a new school as a public charter school;

(4) The number of petitions described in paragraph (3) of this subsection that were approved and the number that were denied, as well as a summary of the reasons for which such petitions were denied;

(5) A description of any new charters issued by the eligible chartering authority during the year preceding the report;

(6) A description of any charters renewed by the eligible chartering authority during the year preceding the report;

(7) A description of any charters revoked by the eligible chartering authority during the year preceding the report;

(8) A description of any charters refused renewal by the eligible chartering authority during the year preceding the report; and

(9) Any recommendations the eligible chartering authority has concerning ways to improve the administration of public charter schools. (Apr. 26, 1996, 110 Stat. 1321 [247], Pub. L. 104-134, § 2211.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, and 31-2853.24.

§ 31-2853.22. Charter renewal.

(a) *Terms.* —

(1) *Initial term.* — A charter granted to a public charter school shall remain in force for a 15-year period.

(2) *Renewals.* — A charter may be renewed for an unlimited number of times, each time for a 15-year period.

(3) *Review.* — An eligible chartering authority that grants or renews a charter pursuant to paragraph (1) or (2) of this subsection shall review the charter—

(A) at least once every 5 years to determine whether the charter should be revoked for the reasons described in subsection (a)(1)(A) or (b) of § 31-2853.23 in accordance with the procedures for such revocation established under § 31-2853.23(c); and

(B) once every 5 years, beginning on the date that is 5 years after the date on which the charter is granted or renewed, to determine whether the charter should be revoked for the reasons described in § 31-2853.23(a)(1)(B) in accordance with the procedures for such revocation established under § 31-2853.23(c).

(b) *Application for charter renewal.* — In the case of a public charter school that desires to renew its charter, the Board of Trustees of the school shall file an application to renew the charter with the eligible chartering authority that

granted the charter not later than 120 days nor earlier than 365 days before the expiration of the charter. The application shall contain the following:

(1) A report on the progress of the public charter school in achieving the goals, student academic achievement expectations, and other terms of the approved charter.

(2) All audited financial statements for the public charter school for the preceding 4 years.

(c) *Approval of charter renewal application.* — The eligible chartering authority that granted a charter shall approve an application to renew the charter that is filed in accordance with subsection (b) of this section, except that the eligible chartering authority shall not approve such application if the eligible chartering authority determines that:

(1) The school committed a material violation of applicable laws or a material violation of the conditions, terms, standards, or procedures set forth in its charter, including violations relating to the education of children with disabilities; or

(2) The school failed to meet the goals and student academic achievement expectations set forth in its charter.

(d) *Procedures for consideration of charter renewal.* —

(1) *Notice of right to hearing.* — An eligible chartering authority that has received an application to renew a charter that is filed by a Board of Trustees in accordance with subsection (b) of this section shall provide to the Board of Trustees written notice of the right to an informal hearing on the application. The eligible chartering authority shall provide the notice not later than 15 days after the date on which the eligible chartering authority received the application.

(2) *Request for hearing.* — Not later than 15 days after the date on which a Board of Trustees receives a notice under paragraph (1) of this subsection, the Board of Trustees may request, in writing, an informal hearing on the application before the eligible chartering authority.

(3) *Date and time of hearing.* —

(A) *Notice.* — Upon receiving a timely written request for a hearing under paragraph (2) of this subsection, an eligible chartering authority shall set a date and time for the hearing and shall provide reasonable notice of the date and time, as well as the procedures to be followed at the hearing, to the Board of Trustees.

(B) *Deadline.* — An informal hearing under this subsection shall take place not later than 30 days after an eligible chartering authority receives a timely written request for the hearing under paragraph (2) of this subsection.

(4) *Final decision.* —

(A) *Deadline.* — An eligible chartering authority shall render a final decision, in writing, on an application to renew a charter:

(i) Not later than 30 days after the date on which the eligible chartering authority provided the written notice of the right to a hearing, in the case of an application with respect to which such a hearing is not held; and

(ii) Not later than 30 days after the date on which the hearing is concluded, in the case of an application with respect to which a hearing is held.

(B) *Reasons for nonrenewal.* — An eligible chartering authority that denies an application to renew a charter shall state in its decision the reasons for denial.

(5) *Alternatives upon nonrenewal.* — If an eligible chartering authority denies an application to renew a charter granted to a public charter school, the Board of Education may:

(A) Manage the school directly until alternative arrangements can be made for students at the school; or

(B) Place the school in a probationary status that requires the school to take remedial actions, to be determined by the Board of Education, that directly relate to the grounds for the denial.

(6) *Judicial review.* — A decision by an eligible chartering authority to deny an application to renew a charter shall be subject to judicial review by an appropriate court of the District of Columbia. (Apr. 26, 1996, 110 Stat. 1321 [248], Pub. L. 104-134, § 2212; Sept. 30, 1996, 110 Stat. 3009 [1468], Pub. L. 104-208, § 5205(e).)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.23, and 31-2853.24.

Effect of amendments. — Public L. 104-208 rewrote (a) and (d)(6).

§ 31-2853.23. Charter revocation.

(a) *Charter or law violations; failure to meet goals.* —

(1) *In general.* — Subject to paragraph (2) of this subsection, an eligible chartering authority that has granted a charter to a public charter school may revoke the charter if the eligible chartering authority determines that the school:

(A) Committed a violation of applicable laws or a material violation of the conditions, terms, standards, or procedures set forth in the charter, including violations relating to the education of children with disabilities; or

(B) Failed to meet the goals and student academic achievement expectations set forth in the charter.

(2) *Special rule.* — An eligible chartering authority may not revoke a charter under paragraph (1)(B) of this subsection, except pursuant to a determination made through a review conducted under § 31-2853.22(a)(3)(B).

(b) *Fiscal mismanagement.* — An eligible chartering authority that has granted a charter to a public charter school shall revoke the charter if the eligible chartering authority determines that the school:

(1) Has engaged in a pattern of nonadherence to generally accepted accounting principles;

(2) Has engaged in a pattern of fiscal mismanagement; or

(3) Is no longer economically viable.

(c) *Procedures for consideration of revocation.* —

(1) *Notice of right to hearing.* — An eligible chartering authority that is proposing to revoke a charter granted to a public charter school shall provide to the Board of Trustees of the school a written notice stating the reasons for the proposed revocation. The notice shall inform the Board of Trustees of the

right of the Board of Trustees to an informal hearing on the proposed revocation.

(2) *Request for hearing.* — Not later than 15 days after the date on which a Board of Trustees receives a notice under paragraph (1) of this subsection, the Board of Trustees may request, in writing, an informal hearing on the proposed revocation before the eligible chartering authority.

(3) *Date and time of hearing.* —

(A) *Notice.* — Upon receiving a timely written request for a hearing under paragraph (2) of this subsection, an eligible chartering authority shall set a date and time for the hearing and shall provide reasonable notice of the date and time, as well as the procedures to be followed at the hearing, to the Board of Trustees.

(B) *Deadline.* — An informal hearing under this subsection shall take place not later than 30 days after an eligible chartering authority receives a timely written request for the hearing under paragraph (2) of this subsection.

(4) *Final decision.* —

(A) *Deadline.* — An eligible chartering authority shall render a final decision, in writing, on the revocation of a charter:

(i) Not later than 30 days after the date on which the eligible chartering authority provided the written notice of the right to a hearing, in the case of a proposed revocation with respect to which such a hearing is not held; and

(ii) Not later than 30 days after the date on which the hearing is concluded, in the case of a proposed revocation with respect to which a hearing is held.

(B) *Reasons for revocation.* — An eligible chartering authority that revokes a charter shall state in its decision the reasons for the revocation.

(5) *Alternatives upon revocation.* — If an eligible chartering authority revokes a charter granted to a public charter school, the Board of Education may manage the school directly until alternative arrangements can be made for students at the school.

(6) *Judicial review.* —

(A) *Availability of review.* — A decision by an eligible chartering authority to revoke a charter shall be subject to judicial review by an appropriate court of the District of Columbia.

(B) *Standard of review.* — A decision by an eligible chartering authority to revoke a charter shall be upheld unless the decision is arbitrary and capricious or clearly erroneous. (Apr. 26, 1996, 110 Stat. 1321 [250], Pub. L. 104-134, § 2213; Sept. 30, 1996, 110 Stat. 3009 [1470], Pub. L. 104-208, § 5205(f).)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, 31-2853.21, 31-2853.22, and 31-2853.24.

Effect of amendments. — Public L. 104-208 rewrote (a).

§ 31-2853.24. Public Charter School Board.**(a) Establishment. —**

(1) *In general.* — There is established within the District of Columbia Government a Public Charter School Board (in this section referred to as the “Board”).

(2) *Membership.* — The Secretary of Education shall present the Mayor a list of 15 individuals the Secretary determines are qualified to serve on the Board. The Mayor, in consultation with the District of Columbia Council, shall appoint 7 individuals from the list to serve on the Board. The Secretary of Education shall recommend, and the Mayor shall appoint, members to serve on the Board so that a knowledge of each of the following areas is represented on the Board:

(A) Research about and experience in student learning, quality teaching, and evaluation of and accountability in successful schools;

(B) The operation of a financially sound enterprise, including leadership and management techniques, as well as the budgeting and accounting skills critical to the startup of a successful enterprise;

(C) The educational, social, and economic development needs of the District of Columbia; and

(D) The needs and interests of students and parents in the District of Columbia, as well as methods of involving parents and other members of the community in individual schools.

(3) Vacancies. —

(A) *Other than from expiration of term.* — Where a vacancy occurs in the membership of the Board for reasons other than the expiration of the term of a member of the Board, the Secretary of Education, not later than 30 days after the vacancy occurs, shall present to the Mayor a list of 3 people the Secretary determines are qualified to serve on the Board. The Mayor, in consultation with the District of Columbia Council, shall appoint one person from the list to serve on the Board. The Secretary shall recommend, and the Mayor shall appoint, such member of the Board taking into consideration the criteria described in paragraph (2) of this subsection. Any member appointed to fill a vacancy occurring prior to the expiration of the term of a predecessor shall be appointed only for the remainder of the term.

(B) *Expiration of term.* — Not later than the date that is 60 days before the expiration of the term of a member of the Board, the Secretary of Education shall present to the Mayor, with respect to each such impending vacancy, a list of 3 people the Secretary determines are qualified to serve on the Board. The Mayor, in consultation with the District of Columbia Council, shall appoint one person from each such list to serve on the Board. The Secretary shall recommend, and the Mayor shall appoint, any member of the Board taking into consideration the criteria described in paragraph (2) of this subsection.

(4) *Time limit for appointments.* — If, at any time, the Mayor does not appoint members to the Board sufficient to bring the Board’s membership to 7 within 30 days after receiving a recommendation from the Secretary of Education under paragraph (2) or (3) of this subsection, the Secretary, not later

than 10 days after the final date for such mayoral appointment, shall make such appointments as are necessary to bring the membership of the Board to 7.

(5) *Terms of members.* —

(A) *In general.* — Members of the Board shall serve for terms of 4 years, except that, of the initial appointments made under paragraph (2) of this subsection, the Mayor shall designate:

- (i) Two members to serve terms of 3 years;
- (ii) Two members to serve terms of 2 years; and
- (iii) One member to serve a term of one year.

(B) *Reappointment.* — Members of the Board shall be eligible to be reappointed for one 4-year term beyond their initial term of appointment.

(6) *Independence.* — No person employed by the District of Columbia public schools or a public charter school shall be eligible to be a member of the Board or to be employed by the Board.

(b) *Operations of the Board.* —

(1) *Chair.* — The members of the Board shall elect from among their membership one individual to serve as Chair. Such election shall be held each year after members of the Board have been appointed to fill any vacancies caused by the regular expiration of previous members' terms, or when requested by a majority vote of the members of the Board.

(2) *Quorum.* — A majority of the members of the Board, not including any positions that may be vacant, shall constitute a quorum sufficient for conducting the business of the Board.

(3) *Meetings.* — The Board shall meet at the call of the Chair, subject to the hearing requirements of §§ 31-2853.13, 31-2853.22(d)(3), and 31-2853.23(c)(3).

(c) *No compensation for service.* — Members of the Board shall serve without pay, but may receive reimbursement for any reasonable and necessary expenses incurred by reason of service on the Board.

(d) *Personnel and resources.* —

(1) *In general.* — Subject to such rules as may be made by the Board, the Chair shall have the power to appoint, terminate, and fix the pay of an Executive Director and such other personnel of the Board as the Chair considers necessary, but no individual so appointed shall be paid in excess of the rate payable for level EG-16 of the Educational Service of the District of Columbia.

(2) *Special rule.* — The Board is authorized to use the services, personnel, and facilities of the District of Columbia.

(e) *Expenses of Board.* — Any expenses of the Board shall be paid from such funds as may be available to the Mayor; provided, That within 45 days of April 26, 1996, the Mayor shall make available not less than \$130,000 to the Board.

(f) *Audit.* — The Board shall provide for an audit of the financial statements of the Board by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General of the United States.

(g) *Authorization of appropriations.* — For the purpose of carrying out the provisions of this section and conducting the Board's functions required by

§§ 31-2853.11 through 31-2853.25, there are authorized to be appropriated to the Board \$300,000 for fiscal year 1997 and such sums as may be necessary for each of the 3 succeeding fiscal years. (Apr. 26, 1996, 110 Stat. 1321 [251], Pub. L. 104-134, § 2214; Sept. 30, 1996, 110 Stat. 3009 [1471], Pub. L. 104-208, § 5205(g); Nov. 19, 1997, 111 Stat. 2191, Pub. L. 105-100, § 169.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-2853.14, 31-2853.15, and 31-2853.21.

Effect of amendments. — Public Law 104-208 rewrote (a)(3).

Section 169 of Pub. L. 105-100, 111 Stat. 2191, in (g), inserted “to the Board” following “appropriated.”

§ 31-2853.25. Federal entities.

(a) *In general.* — The following federal agencies and federally established entities are encouraged to explore whether it is feasible for the agency or entity to establish one or more public charter schools:

- (1) The Library of Congress;
- (2) The National Aeronautics and Space Administration;
- (3) The Drug Enforcement Administration;
- (4) The National Science Foundation;
- (5) The Department of Justice;
- (6) The Department of Defense;
- (7) The Department of Education; and
- (8) The Smithsonian Institution, including the National Zoological Park, the National Museum of American History, the John F. Kennedy Center for the Performing Arts, and the National Gallery of Art.

(b) *Report.* — Not later than 120 days after April 26, 1996, any agency or institution described in subsection (a) of this section that has explored the feasibility of establishing a public charter school shall report its determination on the feasibility to the appropriate congressional committees. (Apr. 26, 1996, 110 Stat. 1321 [253], Pub. L. 104-134, § 2215.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.13, 31-

2853.14, 31-2853.15, 31-2853.21, and 31-2853.24.

Subpart C. World Class School Task Force, Core Curriculum, Content Standards, Assessments, and Promotion Gates.

§ 31-2853.31. Grant authorized and recommendation required.

(a) *Grant authorized.* —

(1) *In general.* — The Superintendent is authorized to award a grant to a World Class Schools Task Force to enable such task force to make the recommendation described in subsection (b) of this section.

(2) *Definition.* — For the purpose of §§ 31-2853.31 through 31-2853.36, the term “World Class Schools Task Force” means one nonprofit organization located in the District of Columbia that:

- (A) Has a national reputation for advocating content standards;

(B) Has a national reputation for advocating a strong liberal arts curriculum;

(C) Has experience with at least 4 urban school districts for the purpose of establishing content standards;

(D) Has developed and managed professional development programs in science, mathematics, the humanities and the arts; and

(E) Is governed by an independent board of directors composed of citizens with a variety of experiences in education and public policy.

(b) *Recommendation required.* —

(1) *In general.* — The World Class Schools Task Force shall recommend to the Superintendent, the Board of Education, and the District of Columbia Goals Panel the following:

(A) Content standards in the core academic subjects that are developed by working with the District of Columbia community, which standards shall be developed not later than 12 months after April 26, 1996.

(B) A core curriculum developed by working with the District of Columbia community, which curriculum shall include the teaching of computer skills.

(C) Districtwide assessments for measuring student achievement in accordance with content standards developed under subparagraph (A) of this paragraph. Such assessments shall be developed at several grade levels, including at a minimum, the grade levels with respect to which the Superintendent establishes promotion gates under § 31-2853.36. To the extent feasible, such assessments shall, at a minimum, be designed to provide information that permits comparisons between:

(i) Individual District of Columbia public schools and public charter schools; and

(ii) Individual students attending such schools.

(D) Model professional development programs for teachers using the standards and curriculum developed under subparagraphs (A) and (B) of this paragraph.

(2) *Special rule.* — The World Class Schools Task Force is encouraged, to the extent practicable, to develop districtwide assessments described in paragraph (1)(C) of this subsection that permit comparisons among:

(A) Individual District of Columbia public schools and public charter schools, and individual students attending such schools; and

(B) Students of other nations.

(c) *Content.* — The content standards and assessments recommended under subsection (b) of this section shall be judged by the World Class Schools Task Force to be world class, including having a level of quality and rigor, or being analogous to content standards and assessments of other States or nations (including nations whose students historically score high on international studies of student achievement).

(d) *Submission to Board of Education for adoption.* — If the content standards, curriculum, assessments, and programs recommended under subsection (b) of this section are approved by the Superintendent, the Superintendent may submit such content standards, curriculum, assessments, and

programs to the Board of Education for adoption. (Apr. 26, 1996, 110 Stat. 1321 [254], Pub. L. 104-134, § 2231.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.31, 31-2853.32, 31-2853.33, 31-2853.34, 31-2853.35, 31-2853.36, and 31-2853.85.

§ 31-2853.32. Consultation.

The World Class Schools Task Force shall conduct its duties under §§ 31-2853.31 through 31-2853.35 in consultation with:

- (1) The District of Columbia Goals Panel;
- (2) Officials of the District of Columbia public schools who have been identified by the Superintendent as having responsibilities relevant to §§ 31-2853.31 through 31-2853.35, including the Deputy Superintendent for Curriculum;
- (3) The District of Columbia community, with particular attention given to educators, and parent and business organizations; and
- (4) Any other persons or groups that the task force deems appropriate. (Apr. 26, 1996, 110 Stat. 1321 [255], Pub. L. 104-134, § 2312.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.31, 31-2853.32, 31-2853.33, 31-2853.34, and 31-2853.35.

§ 31-2853.33. Administrative provisions.

The World Class Schools Task Force shall ensure public access to its proceedings (other than proceedings, or portions of proceedings, relating to internal personnel and management matters) that are relevant to its duties under §§ 31-2853.31 through 31-2853.36 and shall make available to the public, at reasonable cost, transcripts of such proceedings. (Apr. 26, 1996, 110 Stat. 1321 [255], Pub. L. 104-134, § 2313.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.31, 31-2853.32, 31-2853.33, 31-2853.34, and 31-2853.35.

§ 31-2853.34. Consultants.

Upon the request of the World Class Schools Task Force, the head of any department or agency of the Federal Government may detail any of the personnel of such agency to such task force to assist such task force in carrying out such task force's duties under §§ 31-2853.31 through 31-2853.36. (Apr. 26, 1996, 110 Stat. 1321 [255], Pub. L. 104-134, § 2314.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.31, 31-2853.32, 31-2853.33, 31-2853.34, and 31-2853.35.

§ 31-2853.35. Authorization of appropriations.

There are authorized to be appropriated \$2,000,000 for fiscal year 1997 to carry out §§ 31-2853.31 through 31-2853.35. Such funds shall remain avail-

able until expended. (Apr. 26, 1996, 110 Stat. 1321 [256], Pub. L. 104-134, § 2315.)

Section references. — This section is re- 2853.32, 31-2853.33, 31-2853.34, and 31-
ferred to in §§ 31-2852, 31-2853.31, 31- 2853.35.

§ 31-2853.36. Promotion gates.

(a) *Kindergarten through 4th grade.* — Not later than one year after the date of adoption in accordance with § 31-2853.31(d) of the assessments described in § 31-2853.31(b)(1)(C), the Superintendent shall establish and implement promotion gates for mathematics, reading, and writing, for not less than one grade level from kindergarten through grade 4, including at least grade 4, and shall establish dates for establishing such other promotion gates for other subject areas.

(b) *5th through 8th grades.* — Not later than one year after the adoption in accordance with § 31-2853.31(d) of the assessments described in § 31-2853.31(b)(1)(C), the Superintendent shall establish and implement promotion gates with respect to not less than one grade level from grade 5 through grade 8, including at least grade 8.

(c) *9th through 12th grades.* — Not later than one year after the adoption in accordance with § 31-2853.31(d) of the assessments described in § 31-2853.31(b)(1)(C), the Superintendent shall establish and implement promotion gates with respect to not less than one grade level from grade 9 through grade 12, including at least grade 12. (Apr. 26, 1996, 110 Stat. 1321 [256], Pub. L. 104-134, § 2321.)

Section references. — This section is re- 2853.32, 31-2853.33, 31-2853.34, and 31-
ferred to in §§ 31-2853.1, 31-2853.31, 31- 2853.35.

Subpart D. Per Capita District of Columbia Public School and Public
Charter School Funding.

§ 31-2853.41. Annual budgets for schools.

(a) *In general.* — For fiscal year 1997 and for each subsequent fiscal year, the Mayor shall make annual payments from the general fund of the District of Columbia in accordance with the formula established under subsection (b) of this section.

(b) *Formula.* —

(1) *In general.* — The Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, shall establish not later than 90 days after April 26, 1996, a formula to determine the amount of:

(A) The annual payment to the Board of Education for the operating expenses of the District of Columbia public schools, which for purposes of this paragraph includes the operating expenses of the Board of Education and the Office of the Superintendent; and

(B) The annual payment to each public charter school for the operating expenses of each public charter school.

(2) *Formula calculation.* — Except as provided in paragraph (3) of this subsection the amount of the annual payment under paragraph (1) of this subsection shall be calculated by multiplying a uniform dollar amount used in the formula established under such paragraph by:

(A) The number of students calculated under § 31-2853.42 that are enrolled at District of Columbia public schools, in the case of the payment under paragraph (1)(A) of this subsection; or

(B) The number of students calculated under § 31-2853.42 that are enrolled at each public charter school, in the case of a payment under paragraph (1)(B) of this subsection.

(3) *Exceptions.* —

(A) *Formula.* — Notwithstanding paragraph (2) of this subsection, the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, may adjust the formula to increase or decrease the amount of the annual payment to the District of Columbia public schools or each public charter school based on a calculation of:

(i) The number of students served by such schools in certain grade levels; and

(ii) The cost of educating students at such certain grade levels.

(B) *Payment.* — Notwithstanding paragraph (2) of this subsection, the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, may adjust the amount of the annual payment under paragraph (1) of this subsection to increase the amount of such payment if a District of Columbia public school or a public charter school serves a high number of students:

(i) With special needs;

(ii) Who do not meet minimum literacy standards; or

(iii) To whom the school provides room and board in a residential setting.

(C) *Adjustment for facilities costs.* — Notwithstanding paragraph (2) of this subsection, the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, shall adjust the amount of the annual payment under paragraph (1) of this subsection to increase the amount of such payment for a public charter school to take into account leases or purchases of, or improvements to, real property, if the school, not later than April 1 of the fiscal year preceding the payment, requests such an adjustment. (Apr. 26, 1996, 110 Stat. 1321 [256], Pub. L. 104-134, § 2401; Nov. 19, 1997, 111 Stat. 2191, Pub. L. 105-100, §§ 170, 171.)

Section references. — This section is referred to in § 31-2853.43.

Effect of amendments. — Sections 170 and 171 of Pub. L. 105-100, 111 Stat. 2191, added (b)(3)(B)(iii) and (b)(3)(C).

Approval of a Fiscal Year 1997 Uniform Per Student Funding Formula for Public Schools Emergency Resolution of 1996. —

Pursuant to Resolution 11-441, effective July 3, 1996, Council approved, on an emergency basis, a uniform per student funding formula to determine the Fiscal Year 1997 annual payment to the Board of Education for public schools under its control and annual payment to public charter schools.

§ 31-2853.42. Calculation of number of students.*(a) School reporting requirement. —*

(1) *In general.* — Not later than September 15, 1996, and not later than September 15 of each year thereafter, each District of Columbia public school and public charter school shall submit a report to the Mayor and the Board of Education containing the information described in subsection (b) of this section that is applicable to such school.

(2) *Special rule.* — Not later than April 1, 1997, and not later than April 1 of each year thereafter, each public charter school shall submit a report in the same form and manner as described in paragraph (1) of this subsection to ensure accurate payment under § 31-2853.43(a)(2)(B)(ii).

(b) Calculation of number of students. — Not later than 30 days after April 26, 1996, and not later than October 15 of each year thereafter, the Board of Education shall calculate the following:

(1) The number of students, including nonresident students and students with special needs, enrolled in each grade from kindergarten through grade 12 of the District of Columbia public schools and in public charter schools, and the number of students whose tuition for enrollment in other schools is paid for with funds available to the District of Columbia public schools;

(2) The amount of fees and tuition assessed and collected from the nonresident students described in paragraph (1) of this subsection;

(3) The number of students, including nonresident students, enrolled in preschool and prekindergarten in the District of Columbia public schools and in public charter schools;

(4) The amount of fees and tuition assessed and collected from the nonresident students described in paragraph (3) of this subsection;

(5) The number of full time equivalent adult students enrolled in adult, community, continuing, and vocational education programs in the District of Columbia public schools and in public charter schools;

(6) The amount of fees and tuition assessed and collected from resident and nonresident adult students described in paragraph (5) of this subsection;

(7) The number of students, including nonresident students, enrolled in nongrade level programs in District of Columbia public schools and in public charter schools; and

(8) The amount of fees and tuition assessed and collected from nonresident students described in paragraph (7) of this subsection.

(c) Annual reports. — Not later than 30 days after April 26, 1996, and not later than October 15 of each year thereafter, the Board of Education shall prepare and submit to the Authority, the Mayor, the District of Columbia Council, the Consensus Commission, the Comptroller General of the United States, and the appropriate congressional committees a report containing a summary of the most recent calculations made under subsection (b) of this subsection.

(d) Audit of initial calculations. —

(1) *In general.* — The Board of Education shall arrange with the Authority to provide for the conduct of an independent audit of the initial calculations described in subsection (b) of this subsection.

(2) *Conduct of audit.* — In conducting the audit, the independent auditor:

(A) Shall provide an opinion as to the accuracy of the information contained in the report described in subsection (c) of this subsection; and

(B) Shall identify any material weaknesses in the systems, procedures, or methodology used by the Board of Education:

(i) In determining the number of students, including nonresident students, enrolled in the District of Columbia public schools and in public charter schools, and the number of students whose tuition for enrollment in other school systems is paid for by funds available to the District of Columbia public schools; and

(ii) In assessing and collecting fees and tuition from nonresident students.

(3) *Submission of audit.* — Not later than 45 days, or as soon thereafter as is practicable, after the date on which the Authority receives the initial annual report from the Board of Education under subsection (c) of this subsection, the Authority shall submit to the Board of Education, the Mayor, the District of Columbia Council, and the appropriate congressional committees, the audit conducted under this subsection.

(4) *Cost of the audit.* — The Board of Education shall reimburse the Authority for the cost of the independent audit, solely from amounts appropriated to the Board of Education for staff, stipends, and other-than-personal-services of the Board of Education by an act making appropriations for the District of Columbia. (Apr. 26, 1996, 110 Stat. 1321 [257], Pub. L. 104-134, § 2402.)

Section references. — This section is referred to in §§ 31-2853.41 and 31-2853.43.

§ 31-2853.43. Payments.

(a) In general. —

(1) *Escrow for public charter schools.* — Except as provided in subsection (b) of this section, for any fiscal year, not later than 10 days after the date of enactment of an act making appropriations for the District of Columbia for such fiscal year, the Mayor shall place in escrow an amount equal to the aggregate of the amounts determined under § 31-2853.41(b)(1)(B) for use only by District of Columbia public charter schools.

(2) *Transfer of escrow funds.* —

(A) *Initial payment.* —

(i) *In general.* — Except as provided in sub-subparagraph (ii) of this subparagraph, not later than October 15, 1996, and not later than October 15 of each year thereafter, the Mayor shall transfer, by electronic funds transfer, an amount equal to 75% of the amount of the annual payment for each public charter school determined by using the formula established pursuant to § 31-2853.41(b) to a bank designated by such school.

(ii) *Reduction in case of new school.* — In the case of a public charter school that has received a payment under subsection (b) of this section in the fiscal year immediately preceding the fiscal year in which a transfer under

sub-subparagraph (i) of this subparagraph is made, the amount transferred to the school under sub-subparagraph (i) of this subparagraph shall be reduced by an amount equal to 75% of the amount of the payment under subsection (b).

(B) *Final payment.* —

(i) *In general.* — Except as provided in sub-subparagraphs (ii) and (iii) of this subparagraph, not later than May 1, 1997, and not later than May 1 of each year thereafter, the Mayor shall transfer the remainder of the annual payment for a public charter school in the same manner as the initial payment was made under subparagraph (A) of this paragraph.

(ii) *Adjustment for enrollment.* — Not later than March 15, 1997, and not later than March 15 of each year thereafter, if the enrollment number of a public charter school has changed from the number reported to the Mayor and the Board of Education, as required under § 31-2853.42(a), the Mayor shall increase the payment in an amount equal to 50% of the amount provided for each student who has enrolled in such school in excess of such enrollment number, or shall reduce the payment in an amount equal to 50% of the amount provided for each student who has withdrawn or dropped out of such school below such enrollment number.

(iii) *Reduction in case of new school.* — In the case of a public charter school that has received a payment under subsection (b) of this section in the fiscal year immediately preceding the fiscal year in which a transfer under sub-subparagraph (i) of this subparagraph is made, the amount transferred to the school under sub-subparagraph (i) of this subparagraph shall be reduced by an amount equal to 25% of the amount of the payment under subsection (b).

(C) *Pro rata reduction or increase in payments.* —

(i) *Pro rata reduction.* — If the funds made available to the District of Columbia Government for the District of Columbia public school system and each public charter school for any fiscal year are insufficient to pay the full amount that such system and each public charter school is eligible to receive under §§ 31-2853.41 through 31-2853.43 for such year, the Mayor shall ratably reduce such amounts for such year on the basis of the formula described in § 31-2853.41(b).

(ii) *Increase.* — If additional funds become available for making payments under §§ 31-2853.41 through 31-2853.43 for such fiscal year, amounts that were reduced under subparagraph (A) of this paragraph shall be increased on the same basis as such amounts were reduced.

(D) *Unexpended funds.* — Any funds that remain in the escrow account for public charter schools on September 30 of a fiscal year shall revert to the general fund of the District of Columbia.

(b) *Payments to New Schools.* —

(1) *Establishment of fund.* — There is established in the general fund of the District of Columbia a fund to be known as the “New Charter School Fund”.

(2) *Contents of fund.* — The New Charter School Fund shall consist of:

(A) Unexpended and unobligated amounts appropriated from local funds for public charter schools for fiscal year 1997 and subsequent fiscal years that reverted to the general fund of the District of Columbia;

(B) Amounts credited to the fund in accordance with this subsection upon the receipt by a public charter school described in paragraph (5) of this

subsection of its first initial payment under subsection (a)(2)(A) of this section or its first final payment under subsection (a)(2)(B) of this section; and

(C) Any interest earned on such amounts.

(3) *Expenditures from fund.* —

(A) *In general.* — Not later than June 1, 1998, and not later than June 1 of each year thereafter, the Chief Financial Officer of the District of Columbia shall pay, from the New Charter School Fund, to each public charter school described in paragraph (5) of this subsection, an amount equal to 25% of the amount yielded by multiplying the uniform dollar amount used in the formula established under 31-2853.41(b) by the total anticipated enrollment as set forth in the petition to establish the public charter school.

(B) *Pro rata reduction.* — If the amounts in the New Charter School Fund for any year are insufficient to pay the full amount that each public charter school described in paragraph (5) of this subsection is eligible to receive under this subsection for such year, the Chief Financial Officer of the District of Columbia shall ratably reduce such amounts for such year on the basis of the formula described in 31-2853.41(b).

(C) *Form of payment.* — Payments under this subsection shall be made by electronic funds transfer from the New Charter School Fund to a bank designated by a public charter school.

(4) *Credits to fund.* — Upon the receipt by a public charter school described in paragraph (5) of this subsection of:

(A) Its first initial payment under subsection (a)(2)(A) of this section, the Chief Financial Officer of the District of Columbia shall credit the New Charter School Fund with 75% of the amount paid to the school under paragraph (3) of this subsection; and

(B) Its first final payment under subsection (a)(2)(B) of this section, the Chief Financial Officer of the District of Columbia shall credit the New Charter School Fund with 25% of the amount paid to the school under paragraph (3) of this subsection.

(5) *Schools described.* — A public charter school described in this paragraph is a public charter school that:

(A) Did not enroll any students during any portion of the fiscal year preceding the most recent fiscal year for which funds are appropriated to carry out this subsection; and

(B) Operated as a public charter school during the most recent fiscal year for which funds are appropriated to carry out this subsection.

(6) *Authorization of appropriations.* — There are authorized to be appropriated to the Chief Financial Officer of the District of Columbia such sums as may be necessary to carry out this subsection for each fiscal year. (Apr. 26, 1996, 110 Stat. 1321 [259], Pub. L. 104-134, § 2403; Nov. 19, 1997, 111 Stat. 2191, Pub. L. 105-100, § 172)

Section references. — This section is referred to in §§ 31-2853.42 and 31-2843.43.

Pub. L. 105-100, 111 Stat. 2191, rewrote (a)(2)(A), (a)(2)(B), and (b).

Effect of amendments. — Section 172 of

Subpart E. School Facilities Repair and Improvement.

§ 31-2853.50. **Definitions.**

For purposes of §§ 31-2853.50 through 31-2853.54:

(1) The term “facilities” means buildings, structures, and real property of the District of Columbia public schools, except that such term does not include any administrative office building that is not located in a building containing classrooms; and

(2) The term “repair and improvement” includes administration, construction, and renovation. (Apr. 26, 1996, 110 Stat. 1321 [261], Pub. L. 104-134, § 2550.)

Section references. — This section is referred to in § 2853.51.

§ 31-2853.51. **Technical assistance.**

(a) *In general.* — Not later than 90 days after April 26, 1996, the Administrator of the General Services Administration shall enter into a Memorandum of Agreement or Understanding (referred to in §§ 31-2853.50 through 31-2853.54 as the “Agreement”) with the Superintendent regarding the terms under which the Administrator will provide technical assistance and related services with respect to District of Columbia public schools facilities management in accordance with this section.

(b) *Technical assistance and related services.* — The technical assistance and related services described in subsection (a) of this section shall include:

(1) The Administrator consulting with and advising District of Columbia public school personnel responsible for public schools facilities management, including repair and improvement with respect to facilities management of such schools;

(2) The Administrator assisting the Superintendent in developing a systemic and comprehensive facilities revitalization program, for the repair and improvement of District of Columbia public school facilities, which program shall:

(A) Include a list of facilities to be repaired and improved in a recommended order of priority;

(B) Provide the repair and improvement required to support modern technology; and

(C) Take into account the Preliminary Facilities Master Plan 2005 (prepared by the Superintendent’s Task Force on Education Infrastructure for the 21st Century);

(3) The method by which the Superintendent will accept donations of private goods and services for use by the District of Columbia public schools without regard to any law or regulation of the District of Columbia;

(4) The Administrator recommending specific repair and improvement projects in District of Columbia public school facilities to the Superintendent that are appropriate for completion by members and units of the National

Guard and the Reserves in accordance with the program developed under paragraph (2) of this subsection;

(5) Upon the request of the Superintendent, the Administrator assisting the appropriate District of Columbia public school officials in the preparation of an action plan for the performance of any repair and improvement recommended in the program developed under paragraph (2) of this subsection, which action plan shall detail the technical assistance and related services the Administrator proposes to provide in the accomplishment of the repair and improvement;

(6) Upon the request of the Superintendent, and if consistent with the efficient use of resources as determined by the Administrator, the coordination of the accomplishment of any repair and improvement in accordance with the action plan prepared under paragraph (5) of this subsection, except that in carrying out this paragraph, the Administrator shall not be subject to the requirements of Title III of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq., and 41 U.S.C. 251 et seq.), the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), nor shall such action plan be subject to review under the bid protest procedures described in §§ 3551 through 3556 of Title 31, United States Code, or the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.);

(7) Providing access for the Administrator to all District of Columbia public school facilities as well as permitting the Administrator to request and obtain any record or document regarding such facilities as the Administrator determines necessary, except that any such record or document shall not become a record (as defined in § 552a of Title 5, United States Code) of the General Services Administration; and

(8) The Administrator making recommendations regarding how District of Columbia public school facilities may be used by the District of Columbia community for multiple purposes.

(c) *Agreement provisions.* — The Agreement shall include:

(1) The procedures by which the Superintendent and Administrator will consult with respect to carrying out this section, including reasonable time frames for such consultation;

(2) The scope of the technical assistance and related services to be provided by the General Services Administration in accordance with this section;

(3) Assurances by the Administrator and the Superintendent to cooperate with each other in any way necessary to ensure implementation of the Agreement, including assurances that funds available to the District of Columbia shall be used to pay the obligations of the District of Columbia public school system that are incurred as a result of actions taken under, or in furtherance of, the Agreement, in addition to funds available to the Administrator for purposes of this section; and

(4) The duration of the Agreement, except that in no event shall the Agreement remain in effect later than the day that is 24 months after the date that the Agreement is signed, or the day that the agency designated pursuant to § 31-2853.52(a)(2) assumes responsibility for the District of Columbia public school facilities, whichever day is earlier.

(d) *Limitation on administrator's liability.* — No claim, suit, or action may be brought against the Administrator in connection with the discharge of the Administrator's responsibilities under §§ 31-2853.50 through 31-2853.54.

(e) *Special rule.* — Notwithstanding any other provision of law, the Administrator is authorized to accept and use a conditioned gift made for the express purpose of repairing or improving a District of Columbia public school, except that the Administrator shall not be required to carry out any repair or improvement under this section unless the Administrator accepts a donation of private goods or services sufficient to cover the costs of such repair or improvement.

(f) *Effective date.* — Sections 31-2853.50 through 31-2853.54 shall cease to be effective on the earlier day specified in subsection (c)(4). (Apr. 26, 1996, 110 Stat. 1321 [262], Pub. L. 104-134, § 2551.)

Section references. — This section is referred to in §§ 2853.50 and 2853.52.

References in text. — The Office of Federal Procurement Policy Act (41 U.S.C. § 401 et

seq.), referred to in (b)(6), was repealed by Act Feb. 10, 1996, P.L. 104-106, § 4305 (110 Stat. 665).

§ 31-2853.52. Facilities revitalization program.

(a) *Program.* — Not later than 12 months after April 26, 1996, the Mayor and the District of Columbia Council in consultation with the Administrator, the Authority, the Board of Education, and the Superintendent, shall:

(1) Design and implement a comprehensive long-term program for the repair and improvement, and maintenance and management, of the District of Columbia public school facilities, which program shall incorporate the work completed in accordance with the program described in § 31-2853.51(b)(2); and

(2) Designate a new or existing agency or authority within the District of Columbia Government to administer such program.

(b) *Proceeds.* — Such program shall include:

(1) Identifying short-term funding for capital and maintenance of facilities, which may include retaining proceeds from the sale or lease of a District of Columbia public school facility; and

(2) Identifying and designating long-term funding for capital and maintenance of facilities.

(c) *Implementation.* — Upon implementation of such program, the agency or authority created or designated pursuant to subsection (a)(2) of this section shall assume authority and responsibility for the repair and improvement, and maintenance and management, of District of Columbia public schools. (Apr. 26, 1996, 110 Stat. 1321 [263], Pub. L. 104-134, § 2552.)

Section references. — This section is referred to in §§ 2853.50 and 2853.51.

Establishment of Process and Time Deadlines for the Program to Revitalize Public Schools Resolution of 1996. — Pursuant to Resolution 11-629, effective December 3, 1996, Council established a process and time

deadline for development of a program designed to provide for the repair and improvement, and the maintenance and management of District of Columbia public school facilities, and to designate an agency or authority to administer the program.

§ 31-2853.53. Waivers.

(a) *In general.* —

(1) *Requirements waived.* — Subject to subsection (b) of this section, all District of Columbia fees and all requirements contained in the document entitled “District of Columbia Public Schools Standard Contract Provisions” (as such document was in effect on November 2, 1995 and including any revisions or modifications to such document) published by the District of Columbia public schools for use with construction or maintenance projects, are waived, for purposes of repair and improvement of District of Columbia public schools facilities for a period beginning on April 26, 1996, and ending 24 months after such date.

(2) *Donations.* — Any individual may volunteer his or her services or may donate materials to a District of Columbia public school facility for the repair and improvement of such facility provided that the provision of voluntary services meets the requirements of 29 U.S.C. 203(e)(4).

(b) *Limitation.* — A waiver under subsection (a) of this section shall not apply to the Davis-Bacon Act (40 U.S.C. 276a et seq.) or Executive Order 11246 or other civil rights standards. (Apr. 26, 1996, 110 Stat. 1321 [263], Pub. L. 104-134, § 2552; Sept. 9, 1996, 110 Stat. 2356 [2377], Pub. L. 104-194, § 148; Sept. 30, 1996, 110 Stat. 3009 [1473], Pub. L. 104-208, § 5205(h).)

Section references. — This section is referred to in §§ 2853.50 and 2853.51.

Public Law 104-208 added “or other civil rights standards” at the end of (b).

Effect of amendments. — Public Law 104-194 added “and Executive Order 11246” at the end of (b).

§ 31-2853.54. Gifts, donations, bequests, and devises.

(a) *In general.* — A District of Columbia public school or a public charter school may accept directly from any person a gift, donation, bequest, or devise of any property, real or personal, without regard to any law or regulation of the District of Columbia.

(b) *Tax laws.* — For the purposes of the income tax, gift tax, and estate tax laws of the Federal Government, any money or other property given, donated, bequeathed, or devised to a District of Columbia public school or a public charter school, shall be deemed to have been given, donated, bequeathed, or devised to or for the use of the District of Columbia. (Apr. 26, 1996, 110 Stat. 1321 [264], Pub. L. 104-134, § 2571.)

Section references. — This section is referred to in §§ 2853.50 and 2853.51.

Subpart F. Partnerships with Business.

§ 31-2853.61. Purpose.

The purpose of §§ 31-2853.61 through 31-2853.69 is:

(1) To leverage private sector funds utilizing initial Federal investments

in order to provide students and teachers within the District of Columbia public schools and public charter schools with access to state-of-the-art educational technology;

- (2) To establish a regional job training and employment center;
- (3) To strengthen workforce preparation initiatives for students within the District of Columbia public schools and public charter schools;
- (4) To coordinate private sector investments in carrying out this subchapter; and
- (5) To assist the Superintendent with the development of individual career paths in accordance with the long-term reform plan. (Apr. 26, 1996, 110 Stat. 1321 [264], Pub. L. 104-134, § 2601.)

Section references. — This section is referred to in §§ 31-2853.64, 31-2853.65, and 31-2853.69.

§ 31-2853.62. Duties of the Superintendent of the District of Columbia public schools.

The Superintendent is authorized to provide a grant to a private, nonprofit corporation that meets the eligibility criteria under § 31-2853.63 for the purposes of carrying out the duties under §§ 31-2853.64 and 31-2853.67. (Apr. 26, 1996, 110 Stat. 1321 [265], Pub. L. 104-134, § 2602.)

Section references. — This section is referred to in §§ 31-2853.61, 31-2853.63, 31-2853.64, 31-2853.65, and 31-2853.69.

§ 31-2853.63. Eligibility criteria for private, nonprofit corporation.

A private, nonprofit corporation shall be eligible to receive a grant under § 31-2853.62 if the corporation is a national business organization incorporated in the District of Columbia, that:

- (1) Has a board of directors which includes members who are also chief executive officers of technology-related corporations involved in education and workforce development issues;
- (2) Has extensive practical experience with initiatives that link business resources and expertise with education and training systems;
- (3) Has experience in working with State and local educational agencies throughout the United States with respect to the integration of academic studies with workforce preparation programs; and
- (4) Has a nationwide structure through which additional resources can be leveraged and innovative practices disseminated. (Apr. 26, 1996, 110 Stat. 1321 [265], Pub. L. 104-134, § 2603.)

Section references. — This section is referred to in §§ 31-2853.61, 31-2853.63, 31-2853.64, 31-2853.65, and 31-2853.69.

§ 31-2853.64. Duties of the private, nonprofit corporation.

(a) *District Education and Learning Technologies Advancement Council.* —

(1) *Establishment.* — The private, nonprofit corporation shall establish a council to be known as the “District Education and Learning Technologies Advancement Council” (in §§ 31-2853.61 through 31-2853.69 referred to as the “Council”).

(2) *Membership.* —

(A) *In general.* — The private, nonprofit corporation shall appoint members to the Council. An individual shall be appointed as a member to the Council on the basis of the commitment of the individual, or the entity which the individual is representing, to providing time, energy, and resources to the Council.

(B) *Compensation.* — Members of the Council shall serve without compensation.

(3) *Duties.* — The Council:

(A) Shall advise the private, nonprofit corporation with respect to the duties of the corporation under subsections (b) through (d) of this section; and

(B) Shall assist the corporation in leveraging private sector resources for the purpose of carrying out such duties.

(b) *Access to state-of-the-art educational technology.* —

(1) *In general.* — The private, nonprofit corporation, in conjunction with the Superintendent, students, parents, and teachers, shall establish and implement strategies to ensure access to state-of-the-art educational technology within the District of Columbia public schools and public charter schools.

(2) *Electronic data transfer system.* — The private, nonprofit corporation shall assist the Superintendent in acquiring the necessary equipment, including computer hardware and software, to establish an electronic data transfer system. The private, nonprofit corporation shall also assist in arranging for training of District of Columbia public school employees in using such equipment.

(3) *Technology assessment.* —

(A) *In general.* — In establishing and implementing the strategies under paragraph (1) of this subsection, the private, nonprofit corporation, not later than September 1, 1996, shall provide for an assessment of the availability, on April 26, 1996, of state-of-the-art educational technology within the District of Columbia public schools and public charter schools.

(B) *Conduct of assessment.* — In providing for the assessment under subparagraph (A) of this paragraph, the private, nonprofit corporation:

(i) Shall provide for onsite inspections of the state-of-the-art educational technology within a minimum sampling of District of Columbia public schools and public charter schools; and

(ii) Shall ensure proper input from students, parents, teachers, and other school officials through the use of focus groups and other appropriate mechanisms.

(C) *Results of assessment.* — The private, nonprofit corporation shall ensure that the assessment carried out under this paragraph provides, at a

minimum, necessary information on state-of-the-art educational technology within the District of Columbia public schools and public charter schools, including:

(i) The extent to which typical District of Columbia public schools have access to such state-of-the-art educational technology and training for such technology;

(ii) How such schools are using such technology;

(iii) The need for additional technology and the need for infrastructure for the implementation of such additional technology;

(iv) The need for computer hardware, software, training, and funding for such additional technology or infrastructure; and

(v) The potential for computer linkages among District of Columbia public schools and public charter schools.

(4) *Short-term technology plan.* —

(A) *In general.* — Based upon the results of the technology assessment under paragraph (3) of this subsection, the private, nonprofit corporation shall develop a 3-year plan that includes goals, priorities, and strategies for obtaining the resources necessary to implement strategies to ensure access to state-of-the-art educational technology within the District of Columbia public schools and public charter schools.

(B) *Implementation.* — The private, nonprofit corporation, in conjunction with schools, students, parents, and teachers, shall implement the plan developed under subparagraph (A) of this paragraph.

(5) *Long-term technology plan.* — Prior to the completion of the implementation of the short-term technology plan under paragraph (4) of this subsection, the private, nonprofit corporation shall develop a plan under which the corporation will continue to coordinate the donation of private sector resources for maintaining the continuous improvement and upgrading of state-of-the-art educational technology within the District of Columbia public schools and public charter schools.

(c) *District Employment and Learning Center.* —

(1) *Establishment.* — The private, nonprofit corporation shall establish a center to be known as the “District Employment and Learning Center” (in §§ 31-2853.61 through 31-2853.69 referred to as the “Center”), which shall serve as a regional institute providing job training and employment assistance.

(2) *Duties.* —

(A) *Job training and employment assistance program.* — The Center shall establish a program to provide job training and employment assistance in the District of Columbia and shall coordinate with career preparation programs in existence on April 26, 1996, such as vocational education, school-to-work, and career academies in the District of Columbia public schools.

(B) *Conduct of program.* — In carrying out the program established under subparagraph (A) of this paragraph, the Center:

(i) Shall provide job training and employment assistance to youths who have attained the age of 18 but have not attained the age of 26, who are residents of the District of Columbia, and who are in need of such job training and employment assistance for an appropriate period not to exceed 2 years;

(ii) Shall work to establish partnerships and enter into agreements with appropriate agencies of the District of Columbia Government to serve individuals participating in appropriate federal programs, including programs under the Job Training Partnership Act (29 U.S.C. 1501 et seq.), the Job Opportunities and Basic Skills Training Program under Part F of Title IV of the Social Security Act (42 U.S.C. 681 et seq.), the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.), and the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.);

(iii) Shall conduct such job training, as appropriate, through a consortium of colleges, universities, community colleges, businesses, and other appropriate providers, in the District of Columbia metropolitan area;

(iv) Shall design modular training programs that allow students to enter and leave the training curricula depending on their opportunities for job assignments with employers; and

(v) Shall utilize resources from businesses to enhance work-based learning opportunities and facilitate access by students to work-based learning and work experience through temporary work assignments with employers in the District of Columbia metropolitan area.

(C) *Compensation.* — The Center may provide compensation to youths participating in the program under this paragraph for part-time work assigned in conjunction with training. Such compensation may include need-based payments and reimbursement of expenses.

(d) *Workforce preparation initiatives.* —

(1) *In general.* — The private, nonprofit corporation shall establish initiatives with the District of Columbia public schools, and public charter schools, appropriate governmental agencies, and businesses and other private entities, to facilitate the integration of rigorous academic studies with workforce preparation programs in District of Columbia public schools and public charter schools.

(2) *Conduct of initiatives.* — In carrying out the initiatives under paragraph (1) of this subsection, the private, nonprofit corporation shall, at a minimum, actively develop, expand, and promote the following programs:

(A) Career academy programs in secondary schools, as such programs are established in certain District of Columbia public schools, which provide a school-within-a-school concept, focusing on career preparation and the integration of the academy programs with vocational and technical curriculum; and

(B) Programs carried out in the District of Columbia that are funded under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.). (Apr. 26, 1996, 110 Stat. 1321 [265], Pub. L. 104-134, § 2604.)

Section references. — This section is referred to in §§ 31-2853.61, 31-2853.62, 31-2853.65, 31-2853.66, 31-2853.68, and 31-2853.69.

References in text. — Part I of Title IV of

the Social Security Act (42 U.S.C. § 681 et seq.), referred to in (c)(2)(B)(ii), was repealed by Act Aug. 22, 1996, P.L. 104-193, § 108 (110 Stat. 2167).

§ 31-2853.65. Matching funds.

The private, nonprofit corporation, to the extent practicable, shall provide matching funds, or in-kind contributions, or a combination thereof, for the purpose of carrying out the duties of the corporation under § 31-2853.64, as follows:

(1) For fiscal year 1997, the nonprofit corporation shall provide matching funds or in-kind contributions of \$1 for every \$1 of federal funds provided under §§ 31-2853.61 through 31-2853.69 for such year for activities under § 31-2853.64.

(2) For fiscal year 1998, the nonprofit corporation shall provide matching funds or in-kind contributions of \$3 for every \$1 of federal funds provided under §§ 31-2853.61 through 31-2853.69 for such year for activities under § 31-2853.64.

(3) For fiscal year 1999, the nonprofit corporation shall provide matching funds or in-kind contributions of \$5 for every \$1 of federal funds provided under §§ 31-2853.61 through 31-2853.69 for such year for activities under § 31-2853.64. (Apr. 26, 1996, 110 Stat. 1321 [268], Pub. L. 104-134, § 2605.)

Section references. — This section is referred to in §§ 31-2853.61, 31-2853.64, and 31-2853.69.

§ 31-2853.66. Report.

The private, nonprofit corporation shall prepare and submit to the appropriate congressional committees on a quarterly basis, or, with respect to fiscal year 1997, on a semiannual basis, a report which shall contain:

(1) The activities the corporation has carried out, including the duties of the corporation described in § 31-2853.64, for the 3-month period ending on the date of the submission of the report, or, with respect to fiscal year 1997, the 6-month period ending on the date of the submission of the report;

(2) An assessment of the use of funds or other resources donated to the corporation;

(3) The results of the assessment carried out under § 31-2853.64(b)(3); and

(4) A description of the goals and priorities of the corporation for the 3-month period beginning on the date of the submission of the report, or, with respect to fiscal year 1997, the 6-month period beginning on the date of the submission of the report. (Apr. 26, 1996, 110 Stat. 1321 [268], Pub. L. 104-134, § 2606.)

Section references. — This section is referred to in §§ 31-2853.61, 31-2853.64, 31-2853.65, and 31-2853.69.

§ 31-2853.67. Jobs for D.C. Graduates Program.

(a) *In general.* — The nonprofit corporation shall establish a program, to be known as the “Jobs for D.C. Graduates Program”, to assist District of Columbia

public schools and public charter schools in organizing and implementing a school-to-work transition system, which system shall give priority to providing assistance to at-risk youths and disadvantaged youths.

(b) *Conduct of program.* — In carrying out the program established under subsection (a), the nonprofit corporation, consistent with the policies of the nationally recognized Jobs for America's Graduates, Inc., shall:

- (1) Establish performance standards for such program;
- (2) Provide ongoing enhancement and improvements in such program;
- (3) Provide research and reports on the results of such program; and
- (4) Provide preservice and inservice training. (Apr. 26, 1996, 110 Stat. 1321 [269], Pub. L. 104-134, § 2607.)

Section references. — This section is referred to in §§ 31-2853.61, 31-2853.62, 31-2853.64, 31-2853.65, 31-2853.68, and 31-2853.69.

§ 31-2853.68. Authorization of appropriations.

(a) *Authorization.* —

(1) *Delta Council; access to state-of-the-art educational technology; and workforce preparation initiatives.* — There are authorized to be appropriated to carry out subsections (a), (b), and (d) of § 31-2853.64, \$1,000,000 for each of the fiscal years 1997, 1998, and 1999.

(2) *Deal Center.* — There are authorized to be appropriated to carry out § 31-2853.64(c), \$2,000,000 for each of the fiscal years 1997, 1998, and 1999.

(3) *Jobs for D.C. Graduates Program.* — There are authorized to be appropriated to carry out § 31-2853.67:

- (A) \$2,000,000 for fiscal year 1997; and
- (B) \$3,000,000 for each of the fiscal years 1998 through 2001.

(b) *Availability.* — Amounts authorized to be appropriated under subsection (a) are authorized to remain available until expended. (Apr. 26, 1996, 110 Stat. 1321 [269], Pub. L. 104-134, § 2608.)

Section references. — This section is referred to in §§ 31-2853.61, 31-2853.64, 31-2853.65, and 31-2853.69.

§ 31-2853.69. Termination of federal support; sense of the Congress relating to continuation of activities.

(a) *Termination of federal support.* — The authority under §§ 31-2853.61 through 31-2853.69 to provide assistance to the private, nonprofit corporation or any other entity established pursuant to §§ 31-2853.61 through 31-2853.69 shall terminate on October 1, 1999.

(b) *Sense of the Congress relating to continuation of activities.* — It is the sense of the Congress that:

- (1) The activities of the private, nonprofit corporation under § 31-2853.64 should continue to be carried out after October 1, 1999, with resources made available from the private sector; and

(2) The corporation should provide oversight and coordination for such activities after such date. (Apr. 26, 1996, 110 Stat. 1321 [269], Pub. L. 104-134, § 2609.)

Section references. — This section is referred to in §§ 31-2853.61, 31-2853.64, and 31-2853.65.

Subpart G. Management and Fiscal Accountability; Preservation of School-Based Resources.

§ 31-2853.71. Management support systems.

(a) *Food services and security services.* — Notwithstanding any other law, rule, or regulation, the Board of Education shall enter into a contract for academic year 1995-1996 and each succeeding academic year, for the provision of all food services operations and security services for the District of Columbia public schools, unless the Superintendent determines that it is not feasible and provides the Superintendent's reasons in writing to the Board of Education and the Authority.

(b) *Development of new management and data systems.* — Notwithstanding any other law, rule, or regulation, the Board of Education shall, in academic year 1995-1996, consult with the Authority on the development of new management and data systems, as well as training of personnel to use and manage the systems in areas of budget, finance, personnel and human resources, management information services, procurement, supply management, and other systems recommended by the Authority. Such plans shall be consistent with, and contemporaneous to, the District of Columbia Government's development and implementation of a replacement for the financial management system for the District of Columbia Government in use on April 26, 1996. (Apr. 26, 1996, 110 Stat. 1321 [270], Pub. L. 104-134, § 2751.)

§ 31-2853.72. Access to fiscal and staffing data.

(a) *In general.* — The budget, financial-accounting, personnel, payroll, procurement, and management information systems of the District of Columbia public schools shall be coordinated and interface with related systems of the District of Columbia Government.

(b) *Access.* — The Board of Education shall provide read-only access to its internal financial management systems and all other data bases to designated staff of the Mayor, the Council, the Authority, and appropriate congressional committees. (Apr. 26, 1996, 110 Stat. 1321 [270], Pub. L. 104-134, § 2752.)

§ 31-2853.73. Development of fiscal year 1997 budget request.

(a) *In general.* — The Board of Education shall develop its fiscal year 1997 gross operating budget and its fiscal year 1997 appropriated funds budget request in accordance with this section.

(b) *Fiscal Year 1996 Budget Revision.* — Not later than 60 days after April 26, 1996, the Board of Education shall develop, approve, and submit to the Mayor, the District of Columbia Council, the Authority, and appropriate Congressional committees, a revised fiscal year 1996 gross operating budget that reflects the amount appropriated in the District of Columbia Appropriations Act, 1996, and which:

(1) Is broken out on the basis of appropriated funds and nonappropriated funds, control center, responsibility center, agency reporting code, object class, and object; and

(2) Indicates by position title, grade, and agency reporting code, all staff allocated to each District of Columbia public school as of October 15, 1995, and indicates on an object class basis all other-than-personal-services financial resources allocated to each school.

(c) *Zero-Base budget.* — For fiscal year 1997, the Board of Education shall build its gross operating budget and appropriated funds request from a zero-base, starting from the local school level through the central office level.

(d) *School-by-school budgets.* — The Board of Education's initial fiscal year 1997 gross operating budget and appropriated funds budget request submitted to the Mayor, the District of Columbia Council, and the Authority shall contain school-by-school budgets and shall also:

(1) Be broken out on the basis of appropriated funds and nonappropriated funds, control center, responsibility center, agency reporting code, object class, and object;

(2) Indicate by position title, grade, and agency reporting code all staff budgeted for each District of Columbia public school, and indicate on an object class basis all other-than- personal-services financial resources allocated to each school; and

(3) Indicate the amount and reason for all changes made to the initial fiscal year 1997 gross operating budget and appropriated funds request from the revised fiscal year 1996 gross operating budget required by subsection (b) of this section. (Apr. 26, 1996, 110 Stat. 1321 [270], Pub. L. 104-134, § 2753.)

§§ 31-2853.74, 31-2853.75. [Reserved].

Editor's notes. — Sections 2754 and 2755 of § 6322(b)(1) and 20 U.S.C. §§ 6364(a) and Pub. L. 104-134, 110 Stat. 1231 [271] amended 6365(4), respectively) and do not affect the D.C. provisions of federal law (20 U.S.C. Code.

§ 31-2853.76. Preservation of school-based staff positions.

(a) *Restrictions on reductions of school-based employees.* — To the extent that a reduction in the number of full-time equivalent positions for the District of Columbia public schools is required to remain within the number of full-time equivalent positions established for the public schools in appropriations acts, no reductions shall be made from the full-time equivalent positions for school-based teachers, principals, counselors, librarians, or other school-based educational positions that were established as of the end of fiscal year 1995, unless the Authority makes a determination based on student enrollment that:

(1) Fewer school-based positions are needed to maintain established pupil-to-staff ratios; or

(2) Reductions in positions for other than school-based employees are not practicable.

(b) *Definition.* — The term “school-based educational position” means a position located at a District of Columbia public school or other position providing direct support to students at such a school, including a position for a clerical, stenographic, or secretarial employee, but not including any part-time educational aide position. (Apr. 26, 1996, 110 Stat. 1321 [271], Pub. L. 104-134, § 2756.)

Subpart H. Establishment and Organization of the Commission on
Consensus Reform in the District of Columbia Public Schools.

**§ 31-2853.81. Commission on Consensus Reform in the
District of Columbia Public Schools.**

(a) *Establishment.* —

(1) *In general.* — There is established within the District of Columbia Government a Commission on Consensus Reform in the District of Columbia Public Schools, consisting of 7 members to be appointed in accordance with paragraph (2) of this section.

(2) *Membership.* — The Consensus Commission shall consist of the following members:

(A) One member to be appointed by the President chosen from a list of 3 proposed members submitted by the Majority Leader of the Senate;

(B) One member to be appointed by the President chosen from a list of 3 proposed members submitted by the Speaker of the House of Representatives;

(C) Two members to be appointed by the President, of which one shall represent the local business community and one of which shall be a teacher in a District of Columbia public school;

(D) The President of the District of Columbia Congress of Parents and Teachers;

(E) The President of the Board of Education;

(F) The Superintendent;

(G) The Mayor and District of Columbia Council Chairman shall each name one nonvoting ex officio member; and

(H) The Chief of the National Guard Bureau who shall be an ex officio member.

(3) *Terms of service.* — The members of the Consensus Commission shall serve for a term of 3 years.

(4) *Vacancies.* — Any vacancy in the membership of the Consensus Commission shall be filled by the appointment of a new member in the same manner as provided for the vacated membership. A member appointed under this paragraph shall serve the remaining term of the vacated membership.

(5) *Qualifications.* — Members of the Consensus Commission appointed under subparagraphs (A), (B), and (C) of paragraph (2) of this subsection shall

be residents of the District of Columbia and shall have a knowledge of public education in the District of Columbia.

(6) *Chair*. — The Chair of the Consensus Commission shall be chosen by the Consensus Commission from among its members, except that the President of the Board of Education and the Superintendent shall not be eligible to serve as Chair.

(7) *No compensation for service*. — Members of the Consensus Commission shall serve without pay, but may receive reimbursement for any reasonable and necessary expenses incurred by reason of service on the Consensus Commission.

(b) *Executive Director*. — The Consensus Commission shall have an Executive Director who shall be appointed by the Chair with the consent of the Consensus Commission. The Executive Director shall be paid at a rate determined by the Consensus Commission, except that such rate may not exceed the highest rate of pay payable for level EG-16 of the Educational Service of the District of Columbia.

(c) *Staff*. — With the approval of the Chair and the Authority, the Executive Director may appoint and fix the pay of additional personnel as the Executive Director considers appropriate, except that no individual appointed by the Executive Director may be paid at a rate greater than the rate of pay for the Executive Director.

(d) *Special rule*. — The Board of Education, or the Authority, shall reprogram such funds, as the Chair of the Consensus Commission shall in writing request, subject to the approval of the Authority from amounts available to the Board of Education. (Apr. 26, 1996, 110 Stat. 1321 [272], Pub. L. 104-134, § 2851.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.83, 31-2853.84, and 31-2853.88.

Expiration of §§ 2101(b)(1)(K), 2851(a)(2)(H) and 2854 of Public Law 104-134. — Section 2854(b) of Pub. L. 104-134, 110 Stat. 1321 [275], provides that

§§ 2101(b)(1)(K), 2851(a)(2)(H) and 2854 of the act shall cease to be effective on the last day of the 1997-1998 academic year. Sections 2101(b)(1)(K), 2851(a)(2)(H) and 2854 of Pub. L. 104-134 are codified as §§ 31-2853.1(b)(1)(K), 31-2853.81(a)(2)(H) and 31-2853.84.

§ 31-2853.82. Primary purpose and findings.

(a) *Purpose*. — The primary purpose of the Consensus Commission is to assist in developing a long-term reform plan that has the support of the District of Columbia community through the participation of representatives of various critical segments of such community in helping to develop and approve the plan.

(b) *Findings*. — The Congress finds that:

(1) Experience has shown that the failure of the District of Columbia educational system has been due more to the failure to implement a plan than the failure to develop a plan;

(2) National studies indicate that 50% of secondary school graduates lack basic literacy skills, and over 30% of the 7th grade students in the District of Columbia public schools drop out of school before graduating;

(3) Standard student assessments indicate only average performance for grade level and fail to identify individual students who lack basic skills, allowing too many students to graduate lacking these basic skills and diminishing the worth of a diploma;

(4) Experience has shown that successful schools have good community, parent, and business involvement;

(5) Experience has shown that reducing dropout rates in the critical middle and secondary school years requires individual student involvement and attention through such activities as arts or athletics; and

(6) Experience has shown that close coordination between educators and business persons is required to provide noncollege-bound students the skills necessary for employment, and that personal attention is vitally important to assist each student in developing an appropriate career path. (Apr. 26, 1996, 110 Stat. 1321 [273], Pub. L. 104-134, § 2852.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.83, and 31-2853.88.

§ 31-2853.83. Duties and powers of the Consensus Commission.

(a) *Primary responsibility.* — The Board of Education and the Superintendent shall have primary responsibility for developing and implementing the long-term reform plan for education in the District of Columbia.

(b) *Duties.* — The Consensus Commission shall:

(1) Identify any obstacles to implementation of the long-term reform plan and suggest ways to remove such obstacles;

(2) Assist in developing programs that:

(A) Ensure every student in a District of Columbia public school achieves basic literacy skills;

(B) Ensure every such student possesses the knowledge and skills necessary to think critically and communicate effectively by the completion of grade 8; and

(C) Lower the dropout rate in the District of Columbia public schools;

(3) Assist in developing districtwide assessments, including individual assessments, that identify District of Columbia public school students who lack basic literacy skills, with particular attention being given to grade 4 and the middle school years, and establish procedures to ensure that a teacher is made accountable for the performance of every such student in such teacher's class;

(4) Make recommendations to improve community, parent, and business involvement in District of Columbia public schools and public charter schools;

(5) Assess opportunities in the District of Columbia to increase individual student involvement and attention through such activities as arts or athletics, and make recommendations on how to increase such involvement; and

(6) Assist in the establishment of procedures that ensure every District of Columbia public school student is provided the skills necessary for employment, including the development of individual career paths.

(c) *Powers.* — The Consensus Commission shall have the following powers:

(1) To monitor and comment on the development and implementation of the long-term reform plan;

(2) To exercise its authority, as provided in §§ 31-2853.81 through 31-2853.88, as necessary to facilitate implementation of the long-term reform plan;

(3) To review and comment on the budgets of the Board of Education, the District of Columbia public schools and public charter schools;

(4) To recommend rules concerning the management and direction of the Board of Education that address obstacles to the development or implementation of the long-term reform plan;

(5) To review and comment on the core curriculum for kindergarten through grade 12 developed under §§ 31-2853.31 through 31-2853.36;

(6) To review and comment on a core curriculum for prekindergarten, vocational and technical training, and adult education;

(7) To review and comment on all other educational programs carried out by the Board of Education and public charter schools;

(8) To review and comment on the districtwide assessments for measuring student achievement in the core curriculum developed under §§ 31-2853.31 through 31-2853.36;

(9) To review and comment on the model professional development programs for teachers using the core curriculum developed under §§ 31-2853.31 through 31-2853.36.

(d) *Limitations.* —

(1) *In general.* — Except as otherwise provided in §§ 31-2853.81 through 31-2853.88, the Consensus Commission shall have no powers to involve itself in the management or operation of the Board of Education with respect to the implementation of the long-term reform plan. (Apr. 26, 1996, 110 Stat. 1321 [274], Pub. L. 104-134, § 2853.)

Section references. — This section is referred to in §§ 31-2852 and 31-2853.88.

§ 31-2853.84. Improving order and discipline.

(a) *Community service requirement for suspended students.* —

(1) *In general.* — Any student suspended from classes at a District of Columbia public school who is required to serve the suspension outside the school shall perform community service for the period of suspension. The community service required by this subsection shall be subject to rules and regulations promulgated by the Mayor.

(2) *Effective date.* — This subsection shall take effect on the first day of the 1996-1997 academic year.

(b) *Expiration date.* — This section, and §§ 31-2853.1(b)(1)(K) and 31-2853.81(a)(2)(H), shall cease to be effective on the last day of the 1997-1998 academic year.

(c) *Report.* — The Consensus Commission shall study the effectiveness of the policies implemented pursuant to this section in improving order and

discipline in District of Columbia public schools and report its findings to the appropriate congressional committees not later than 60 days prior to the last day of the 1997-1998 academic year. (Apr. 26, 1996, 110 Stat. 1321 [275], Pub. L. 104-134, § 2854.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.83, and 31-2853.88.

§ 31-2853.85. Educational performance audits.

(a) *In general.* — The Consensus Commission may examine and request the Inspector General of the District of Columbia or the Authority to audit the records of the Board of Education to ensure, monitor, and evaluate the performance of the Board of Education with respect to compliance with the long-term reform plan and such plan's overall educational achievement. The Consensus Commission shall conduct an annual review of the educational performance of the Board of Education with respect to meeting the goals of such plan for such year. The Board of Education shall cooperate and assist in the review or audit as requested by the Consensus Commission.

(b) *Audit.* — The Consensus Commission may examine and request the Inspector General of the District of Columbia or the Authority to audit the records of any public charter school to assure, monitor, and evaluate the performance of the public charter school with respect to the content standards and districtwide assessments described in § 31-2853.31(b). The Consensus Commission shall receive a copy of each public charter school's annual report. (Apr. 26, 1996, 110 Stat. 1321 [275], Pub. L. 104-134, § 2855.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.83, and 31-2853.88.

§ 31-2853.86. Investigative powers.

The Consensus Commission may investigate any action or activity which may hinder the progress of any part of the long-term reform plan. The Board of Education shall cooperate and assist the Consensus Commission in any investigation. Reports of the findings of any such investigation shall be provided to the Board of Education, the Superintendent, the Mayor, the District of Columbia Council, the Authority, and the appropriate Congressional committees. (Apr. 26, 1996, 110 Stat. 1321 [276], Pub. L. 104-134, § 2856.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.83, and 31-2853.88.

§ 31-2853.87. Recommendations of the Consensus Commission.

(a) *In general.* — The Consensus Commission may at any time submit recommendations to the Board of Education, the Mayor, the District of

Columbia Council, the Authority, the Board of Trustees of any public charter school and the Congress with respect to actions the District of Columbia Government or the Federal Government should take to ensure implementation of the long-term reform plan.

(b) *Authority actions.* — Pursuant to the District of Columbia Financial Responsibility and Management Assistance Act of 1995 or upon the recommendation of the Consensus Commission, the Authority may take whatever actions the Authority deems necessary to ensure the implementation of the long-term reform plan. (Apr. 26, 1996, 110 Stat. 1321 [276], Pub. L. 104-134, § 2857.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.83, and 31-2853.88.

References in text. — The District of Columbia Financial Responsibility and Manage-

ment Assistance Act of 1995, referred to in this section, is Pub. Law 104-8, 109 Stat. 97, which is codified primarily as §§ 47-317.1 et seq. and 47-391.1 et seq.

§ 31-2853.88. Expiration date.

Except as otherwise provided in §§ 31-2853.81 through 31-2853.88, shall be effective during the period beginning on April 26, 1996 and ending 7 years after such date. (Apr. 26, 1996, 110 Stat. 1321 [276], Pub. L. 104-134, § 2858.)

Section references. — This section is referred to in §§ 31-2852, 31-2853.83, and 31-2853.88.

Subpart I. Parent Attendance at Parent-Teacher Conferences.

§ 31-2853.91. Policy.

Notwithstanding any other provision of law, the Mayor is authorized to develop and implement a policy encouraging all residents of the District of Columbia with children attending a District of Columbia public school to attend and participate in at least one parent-teacher conference every 90 days during the academic year. (Apr. 26, 1996, 110 Stat. 1321 [276], Pub. L. 104-134, § 2901.)

TITLE 32. ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS.

Chapter

1. Hospitals and Asylums; General Provisions..... §§ 32-101 to 32-127.
2. D.C. General Hospital Commission..... [Repealed].
- 2A. District of Columbia Health and Hospitals
 - Public Benefit Corporation..... §§ 32-261.1 to 32-263.3.
3. Certificate of Need..... [Repealed].
- 3A. Health Services Planning Program..... [Repealed].
- 3B. Health Services Planning..... §§ 32-351 to 32-371.
4. Uniform Management of Institutional Funds..... §§ 32-401 to 32-409.
5. Medical Records..... §§ 32-501 to 32-505.
- 5A. Healthcare Entity Conversion..... §§ 32-551 to 32-560.
6. Saint Elizabeths Hospital and District of
 - Columbia Mental Health Services..... §§ 32-601 to 32-629.
7. Industrial Home School..... §§ 32-701 to 32-704.
8. Forest Haven..... §§ 32-801 to 32-804.
9. Washington Humane Society..... §§ 32-901 to 32-911.
10. Placement of Children in Family Homes..... §§ 32-1001 to 32-1011.
- 10A. Interstate Compact on Placement of Children... §§ 32-1041 to 32-1044.
11. Interstate Compact on Juveniles..... §§ 32-1101 to 32-1106.
12. Miscellaneous Provisions..... §§ 32-1201 to 32-1209.
13. Health-Care and Community Residence
 - Facility, Hospice and Home Care Licensure.... §§ 32-1301 to 32-1309.
14. Nursing Homes and Community Residence
 - Facilities Protections..... §§ 32-1401 to 32-1462.
15. Clinical Laboratory..... §§ 32-1501 to 32-1513.
16. Substance Abuse Treatment and Prevention..... §§ 32-1601 to 32-1610.
17. Judiciary Square Detention Facility Construction. §§ 32-1701 to 32-1703.

Cross references. — As to Criminal Justice
Advisory Board, see § 2-1101 et seq.
As to smoke detectors, see § 5-529 et seq.

CHAPTER 1. HOSPITALS AND ASYLUMS; GENERAL PROVISIONS.

- | Sec. | Sec. |
|---|---|
| 32-101 to 32-111. [Repealed]. | 32-119.2. Asbestos abatement — Task Force established. |
| 32-112. Limitation on erection of hospital for contagious diseases. | 32-119.3. Same — Rules and regulations. |
| 32-113. Children's Tuberculosis Sanatorium — Construction and equipping authorized. | 32-119.4. Same — Appropriations. |
| 32-114, 32-115. [Repealed]. | 32-120. Conveyance of property to Columbia Hospital — In general. |
| 32-116. Providence Hospital authorized to conduct hospital, clinic and school. | 32-121. [Repealed]. |
| 32-117 to 32-119. [Repealed]. | 32-122. Same — Creation of lien in favor of United States. |
| 32-119.1. Fees for clinical services. | 32-123. Standards of indigency; emergency and semi-indigent patients. |

Sec.

32-124. Payments to needy patients.

32-125. Institutional care under contract.

32-126. Stipends for patients and certain resident employees.

Sec.

32-127. Benefits in lieu of salary for certain workers in District facilities.

§§ 32-101 to 32-105. Private facilities — License required; enforcement of provisions and regulations; inspections; violations of provisions or regulations; Council authorized to promulgate regulations; prosecutions.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(i), 30 DCR 5778.

Legislative history of Law 5-48. — Law 5-48 was introduced in Council and assigned Bill No. 7-166, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on Sep-

tember 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

§ 32-106. Report of loss of privileges by health care providers.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(b), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-107. Rules and regulations for Smallpox Hospital.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(k), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-108. Washington Asylum Hospital continued.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(h), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-109. Admission of pay patients to psychopathic ward of General Hospital.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(g), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-110. Admission of pay patients to contagious-disease ward of General Hospital.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(f), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-111. Admission of pay patients to Glenn Dale Hospital.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(g), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-112. Limitation on erection of hospital for contagious diseases.

No building for use as a public or private hospital for contagious diseases shall be erected in the District of Columbia within 300 feet of any building owned by a private individual or any other party than the one erecting the building. (Mar. 2, 1895, 28 Stat. 758, ch. 176; 1973 Ed., § 32-311.)

Cross references. — As to ability of Mayor to make rules and regulations to control and prevent spread of communicable diseases, see § 6-117.

§ 32-113. Children's Tuberculosis Sanatorium — Construction and equipping authorized.

The Mayor of the District of Columbia is authorized to acquire, by purchase, condemnation, or otherwise, a site, and to cause to be constructed thereon, in accordance with plans and specifications approved by such Mayor, suitable buildings and structures for use as a Children's Tuberculosis Sanatorium, including necessary approaches and roadways, heating and ventilating apparatus, furniture, equipment, and accessories. (Mar. 1, 1929, 45 Stat. 1425, ch. 422, § 1; 1973 Ed., § 32-312.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-114. Same — Admission of pay patients.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(e), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-115. Receipt of contagious-disease cases by Providence and Garfield Memorial Hospitals.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(j), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-116. Providence Hospital authorized to conduct hospital, clinic and school.

The Providence Hospital is authorized to conduct not only a hospital, clinic, and all the departments, staffs, and services usually connected therewith, but also a school for the education and training of nurses and interns with full power to examine the said nurses and interns and to issue suitable certificates evidencing the completion of their courses of training. (Oct. 29, 1945, 59 Stat. 551, ch. 439, § 2; 1973 Ed., § 32-316a.)

§ 32-117. Charges for treatment of patients.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(c), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-118. Availability of appropriations.

Repealed. Feb. 24, 1984, D.C. Law 5-48, § 12(d), 30 DCR 5778.

Legislative history of Law 5-48. — See note to § 32-101.

§ 32-119. Fees for clinical services; free services.

Repealed. Mar. 15, 1985, D.C. Law 5-173, § 6, 32 DCR 736.

Cross references. — As to present provisions concerning fees for clinical services at District of Columbia health clinics, see § 32-119.1.

Legislative history of Law 5-173. — See note to § 32-119.1.

§ 32-119.1. Fees for clinical services.

(a) A fee, based on rates to be established by the Mayor, shall be charged to each person who is not indigent for all clinical services provided at District of Columbia health clinics. The Mayor's authority to set such fees at D.C. General

Hospital and for those services provided at the Ambulatory Health Care Administration community health clinics shall terminate on the date that the Board of Directors of the District of Columbia Health and Hospitals Public Benefit Corporation has its first meeting in accordance with § 32-262.4(h).

(b) The following clinical health services shall be provided by the Mayor at District of Columbia health clinics, including the outpatient clinic at the D.C. General Hospital, through contractual arrangements with private agencies or providers, or through other alternative arrangements:

(1) Screening services:

(A) Hypertension;

(B) Sickle cell anemia; and

(C) Asbestosis, cancer of the stomach, cancer of the colon, rectal cancer, and other diseases resulting from prolonged exposure to asbestos. Free screening services for these diseases shall be provided only to those persons who have been identified as having a high risk of asbestos related disease and who do not have any form of health insurance in accordance with recommendations of the Task Force on Asbestos Abatement and rules and regulations issued by the Mayor.

(2) Screening and treatment services:

(A) Drug addiction;

(B) Lead poisoning;

(C) Venereal disease;

(D) Tuberculosis outpatient care; and

(E) Forensic psychiatry.

(3) Immunization services:

(A) Communicable disease in adults and children; and

(B) Rabies in animals.

(c)(1) The Mayor may determine that certain services will be provided without charge to all patients, because such a policy is determined to be in the public interest on the basis of any of the following health factors:

(A) Threat of communicable disease;

(B) Danger to the public health; or

(C) Mortality and morbidity related to a specific disease.

(2) All clinical health services shall be provided, without charge, at District of Columbia health clinics, including the outpatient clinic at the D.C. General Hospital, to persons who are receiving assistance under subchapter VII of Chapter 2 of Title 3, and who do not receive assistance under Medicaid.

(d) At the beginning of each fiscal year, the Mayor shall cause to be published in the District of Columbia Register a list of those services, if any, rendered free of charge by city clinics and by the D.C. General Hospital in the public interest.

(e) For purposes of this section and §§ 32-119.2 to 32-119.4, the term "clinical services" shall include all health services rendered by the District in an ambulatory setting, including mental health, alcoholism, and drug treatment services. (Mar. 15, 1985, D.C. Law 5-173, § 2, 32 DCR 736; Apr. 9, 1997, D.C. Law 11-212, § 401, 43 DCR 4962.)

Section references. — This section is referred to in §§ 32-119.3 and 32-119.4.

Effect of amendments. — D.C. Law 11-212, in (a), deleted “the outpatient clinic at D.C. General Hospital” from the end of the first sentence and rewrote the second sentence.

Emergency act amendments. — For temporary amendment of section, see § 401 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), § 401 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), § 401 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and see § 401 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Section 501 of D.C. Act 12-39 provides for the application of the act.

Legislative history of Law 5-173. — Law 5-173, “Fees for Clinical Services and Asbestos Abatement Act of 1984,” was introduced in Council and assigned Bill No. 5-493, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-238 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-212. — Law 11-212, the “Health and Hospitals Public Benefit Corporation Act of 1996,” was introduced in Council and assigned Bill No. 11-604, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 7, 1996, it was assigned Act No. 11-389 and transmitted to both Houses of Congress for its review. D.C. Law 11-212 became effective on April 9, 1997.

§ 32-119.2. Asbestos abatement — Task Force established.

(a) There is established a Task Force on Asbestos Abatement (“Task Force”).

(b) The Task Force shall consist of 9 members appointed as follows:

(1) Two members shall be appointed by the Mayor to represent the interests of the District of Columbia government;

(2) Two members shall be appointed by the Board of Education to represent the interests of the District of Columbia Public Schools; and

(3) Five members shall be appointed by the Council, 3 of whom shall have experience in the field of occupational health and safety and who shall have demonstrated a knowledge of and interest in asbestos-related diseases.

(c) Members of the Task Force shall be appointed within 15 days (excluding Saturdays, Sundays, and holidays) of the effective date of this act, or within 15 days (excluding Saturdays, Sundays, and holidays) of the effective date of emergency legislation establishing a Task Force on Asbestos Abatement, whichever occurs first.

(d) Vacancies occurring upon the Task Force shall be filled in the same manner as original appointees as provided in subsection (b) of this section.

(e) Five members of the Task Force shall constitute a quorum.

(f) The Task Force shall study all matters relating to the presence and condition of asbestos in public buildings owned or leased by the District of Columbia and shall make recommendations to the Mayor and the Council within 120 days of November 29, 1984. The report shall outline an asbestos abatement program for the District and shall contain, but not be limited to, the following information:

(1) A list of all public buildings owned or leased by the District of Columbia which have been constructed with asbestos materials and which pose a threat to public health and safety, or a plan for identifying these buildings;

(2) A plan for identifying those individuals within the District of Columbia who have a high risk of asbestos-related diseases because of prolonged exposure to public buildings containing friable asbestos material;

(3) Draft legislation to regulate individuals who are in the business of removing or containing asbestos material;

(4) Projections on the cost of removal or containment of asbestos in public buildings and on the cost of providing screening services to persons who have been identified as having a high risk of asbestos-related disease; and

(5) Specific recommendations on action that may be taken by the Mayor and the Council to implement a prompt and thorough abatement program.

(g) The Task Force shall cease to exist 30 days after submission of the report required by subsection (f) of this section. (Mar. 15, 1985, D.C. Law 5-173, § 3, 32 DCR 736.)

Section references. — This section is referred to in §§ 32-119.1, 32-119.3, and 32-119.4.

Legislative history of Law 5-173. — See note to § 32-119.1.

References in text. — “The effective date of this act” (D.C. Law 5-173), referred to in subsection (c) of this section, is March 15, 1985.

“The effective date of emergency legislation establishing a Task Force on Asbestos Abatement” (Fees for Clinical Services and Asbestos Abatement Emergency Act of 1984, D.C. Act 5-209, 31 DCR 6402), referred to in subsection (c) of this section, is November 29, 1984.

§ 32-119.3. Same — Rules and regulations.

The Mayor is authorized to issue rules and regulations, in accordance with recommendations of the Task Force, to carry out the purposes of §§ 32-119.1 through 32-119.4. (Mar. 15, 1985, D.C. Law 5-173, § 4, 32 DCR 736.)

Section references. — This section is referred to in §§ 32-119.1 and 32-119.4.

Legislative history of Law 5-173. — See note to § 32-119.1.

§ 32-119.4. Same — Appropriations.

There may be appropriated out of revenues available to the District sums necessary to carry out the purposes of §§ 32-119.1 through 32-119.4. (Mar. 15, 1985, D.C. Law 5-173, § 5, 32 DCR 736.)

Section references. — This section is referred to in §§ 32-119.1 and 32-119.3.

Legislative history of Law 5-173. — See note to § 32-119.1.

§ 32-120. Conveyance of property to Columbia Hospital — In general.

Subject to the provisions of § 32-121, the Administrator of General Services and the Commissioner of the District of Columbia are directed to convey, without monetary consideration, to the Columbia Hospital for Women and Lying-in Asylum, Washington, District of Columbia, a corporation created by the Act of June 1, 1866 (14 Stat. 55), all right, title, and interest of the United States and of the District of Columbia in and to those pieces or parcels of land in the District of Columbia, described as follows, together with all improvements thereon and appurtenances thereto:

(1) All that piece or parcel of land situate and lying in the City of Washington in the District of Columbia and known as part of square no. 25, as laid down and distinguished on the plat or plan of said City, as follows: Beginning at the southeast corner of said square and running thence north with 24th Street 231 feet and 7 inches; thence west 230 feet and 6 inches; thence north to M Street 231 feet and 10 inches; thence west with M Street 215 feet and 6 inches to 25th Street; thence south with 25th Street 263 feet and 5 inches; thence east 200 feet; thence south to L Street 200 feet; thence east with L Street 246 feet to the beginning; and being the property conveyed to the United States of America by deed dated October 17, 1876, from the Columbia Hospital for Women and Lying-in Asylum, recorded in liber 836, folio 159, of the land records of the District of Columbia; and

(2) All that piece or parcel of land situate and lying in the City of Washington in the District of Columbia on the northeast corner of L and 25th Streets Northwest, being a part of original square no. 25, as follows: Beginning at the southwest corner of said square and running thence east with the line of said L Street 200 feet for a corner; thence north 200 feet for a corner; thence west 200 feet for a corner; and thence south 200 feet to the place of beginning; containing 40,000 square feet of ground, more or less, and being the property conveyed to the United States of America by deed dated July 6, 1872, from the Columbia Hospital for Women and Lying-in Asylum and Edward Maynard, recorded in liber 811, folio 481 of the land records of the District of Columbia. (June 28, 1952, 66 Stat. 287, ch. 486, § 1; 1973 Ed., § 32-323.)

Section references. — This section is referred to in §§ 32-121 and 32-122.

§ 32-121. Same — Restriction on use.

Repealed. Aug. 5, 1997, 111 Stat. 786, Pub. L. 105-33, § 11716.

§ 32-122. Same — Creation of lien in favor of United States.

The provisions of the paragraph following the appropriation for the Washington Hospital for Foundlings in § 32-1203, creating a lien in favor of the United States with respect to the appropriations referred to therein, shall also apply to the appropriations in the aggregate amount of \$50,000, granted in the Act of June 10, 1872 (17 Stat. 360), and in the Act of March 3, 1875 (18 Stat. 386), for the purchase by the United States of the property described in § 32-120, and the acceptance by the Columbia Hospital for Women and Lying-in Asylum of the conveyance of said property shall be deemed an acceptance of and agreement to this provision. (June 28, 1952, 66 Stat. 288, ch. 486, § 3; 1973 Ed., § 32-325.)

§ 32-123. Standards of indigency; emergency and semi-indigent patients.

The Council of the District of Columbia shall establish from time to time reasonable standards of indigency for admission of patients to municipal hospitals of the District of Columbia; provided, that emergency and semi-indigent patients may be admitted to the general ward and tuberculosis ward of District of Columbia General Hospital on a fullor part-pay basis at such rates and under such regulations as may be established by the Council insofar as such admissions will not interfere with the admission of indigent patients: Provided further, that the Mayor of the District of Columbia may enter into agreements with the States of Maryland and Virginia, or the political subdivisions thereof, for the care and treatment in such municipal hospitals of emergency patients who are indigent residents of such States or political subdivisions. (June 27, 1942, 56 Stat. 441, ch. 452, § 1; 1973 Ed., § 32-326.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(252) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Gallinger Municipal Hospital abolished. — Gallinger Municipal Hospital was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, combined with Reorganization Order No. 52, District of Columbia Pound, dated June 30, 1953, and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a

Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. Prior to its redesignation the Order abolished the previously existing Gallinger Municipal Hospital and Health Department and transferred all of their positions and functions to the new Department. It further provided that within the Department, the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions as stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. Functions as stated in Reorganization Plan No. 2 of 1979, dated February 21, 1980, were transferred to the Department of Human Services.

Care for the indigent sick is a "governmental function." *Calomeris v. District of Columbia*, 226 F.2d 266 (D.C. Cir. 1955).

Hospital not immune from suit. — District of Columbia General Hospital is not immune from suit for injuries sustained by paying patient as the result of negligent treatment on the theory that the District is a governmental entity. *Spencer v. General Hosp.*, 425 F.2d 479 (D.C. Cir. 1969).

§ 32-124. Payments to needy patients.

The Mayor of the District of Columbia, pursuant to regulations prescribed by

the Council of the District of Columbia, is authorized to furnish cash payments to needy patients in hospitals operated by or under contract (relating to the care of needy patients) with the District of Columbia in such amounts and at such times as he may determine. (1973 Ed., § 32-331; Oct. 26, 1973, 87 Stat. 504, Pub. L. 93-140, § 4.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-125. Institutional care under contract.

The Mayor of the District of Columbia is authorized to contract with hospitals and other institutions for both the care of indigent or medically indigent patients in hospitals and the care and maintenance of persons for whom the District of Columbia is responsible. The Mayor may from time to time adjust the rates of reimbursement for such care by issuing rules pursuant to subchapter I of Chapter 15 of Title 1, and by filing a copy of proposed rate changes with the Council of the District of Columbia at least 30 days before their effective date. The 30-day period for Council review shall not include days that pass during a recess of the Council. The rates of reimbursement under the D.C. Medical Charities program in effect for the fiscal year ending September 30, 1985, shall thereafter remain in effect until adjusted by the Mayor in accordance with this section. (1973 Ed., § 32-332; Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 5; July 25, 1985, D.C. Law 6-11, § 2, 32 DCR 3230.)

Legislative history of Law 6-11. — Law 6-11 was introduced in Council and assigned Bill No. 6-174, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 30, 1985, and May 14, 1985, respectively.

Signed by the Mayor on May 30, 1985, it was assigned Act No. 6-25 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 6-11. — See Mayor's Order 86-37, March 3, 1986.

§ 32-126. Stipends for patients and certain resident employees.

The Mayor of the District of Columbia is authorized, pursuant to regulations prescribed by the Council of the District of Columbia, to provide for the payment of stipends to patients and residents employed in institutions of or under programs sponsored by the government of the District of Columbia as an aid to their rehabilitation or for training purposes. Nothing contained herein shall be construed as conferring employee status on any person covered by this section. (1973 Ed., § 32-333; Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 6.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-127. Benefits in lieu of salary for certain workers in District facilities.

Notwithstanding any other provision of law, the Mayor of the District of Columbia is authorized to furnish, pursuant to regulations prescribed by the Council of the District of Columbia, subsistence, living quarters, and laundry in lieu of salary to persons authorized by the Mayor to work in facilities of the government of the District of Columbia for the purposes of securing training and experience in their future vocations. (1973 Ed., § 32-334; Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 7; Mar. 3, 1979, D.C. Law 2-139, § 3205(dd), 25 DCR 5740.)

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

2-139. — See § 1-637.1.

Change in government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 2. D.C. GENERAL HOSPITAL COMMISSION.

Subchapter I. General Provisions.

Subchapter IV. Hospital Finances.

Sec.

32-201 to 32-202. [Repealed].

Sec.

32-241 to 32-243. [Repealed].

Subchapter II. D.C. General Hospital Commission.

Subchapter V. Miscellaneous Provisions.

32-211 to 32-224. [Repealed].

32-251 to 32-257. [Repealed].

Subchapter III. Hospital Personnel.

32-231 to 32-236. [Repealed].

Subchapter I. General Provisions.

§§ 32-201 to 32-202. Legislative findings; purpose of chapter; definitions.

Repealed. Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.

Emergency act amendments. — For temporary repeal of this chapter, consisting of §§ 32-201 through 32-257, see § 402 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), § 402 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), § 402 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and see § 402 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Section 501 of D.C. Act 12-39 provides for the application of the act.

For temporary delay of the effective date of § 402 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, see § 501(c) of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR

4937), and § 501(c) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), and § 501(c) of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

Legislative history of Law 11-212. — Law 11-212, the “Health and Hospitals Public Benefit Corporation Act of 1996,” was introduced in Council and assigned Bill No. 11-604, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 7, 1996, it was assigned Act No. 11-389 and transmitted to both Houses of Congress for its review. D.C. Law 11-212 became law on April 12, 1997.

Effective date of § 402 of D.C. Law 11-212. — Section 501(c) of D.C. Law 11-212 provides that § 402 of the act shall become effective upon the first meeting of the Board pursuant to § 32-262.4(h).

Subchapter II. D.C. General Hospital Commission.

§§ 32-211 to 32-224. Establishment; transfer of duties, powers, and functions to Executive Director; plan to restore solvency; composition; qualifications for membership; terms of office; appointments to vacancies; rules of procedure; meet-

ings; public budget hearings; selection, duties and terms of officers; suspension or removal; compensation; duties and powers; staff members; furnishing assistance by District agencies; release of information; liability of Commissioners; notice of rate changes; public hearing.

Repealed. April 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.

Emergency act amendments. — See notes to § 32-201.

Legislative history of Law 11-212. — See note to § 32-201.

Editor's notes. — Former § 32-220 was also amended by § 315(a) of D.C. Law 11-259. D.C. Law 11-259 amended the section by designating the provisions of the sections as (a) and repealed (a)(8).

D.C. Law 11-259 also added (b) which read:

“(b) All goods, services, and improvements to achieve any or all of the Commission's purposes shall be procured by the Office of Contracting

and Procurement. This includes contracts for capital construction projects for which funds have been authorized and made available to construct, maintain, repair, improve, or modify Commission facilities and to plan, design, and implement capital construction projects; provided, that for the purposes of this subsection, the term “Commission facilities” means health care facilities or other facilities owned by or under the jurisdiction of the Commission, but does not include sidewalks or streets that are public ways or any sewer or water mains.”

Subchapter III. Hospital Personnel.

§§ 32-231 to 32-236. Executive Director; appointment and termination; powers and responsibilities; Medical Director; appointment; duties; staff; personnel system; transfer of positions and funds; discrimination prohibited.

Repealed. April 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.

Emergency act amendments. — See notes to § 32-201.

Legislative history of Law 11-212. — See note to § 32-201.

Subchapter IV. Hospital Finances.

§§ 32-241 to 32-243. Budgets and appropriations; bills for services; establishment of D.C. General Hospital Fund; deposit and transfer of monies; billing receipts; capital debt service; federal provisions not affected; audits.

Repealed. April 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.

Emergency act amendments. — See notes to § 32-201.

Legislative history of Law 11-212. — See note to § 32-201.

Subchapter V. Miscellaneous Provisions.

§§ 32-251 to 32-257. Purchasing; annual reports; Task Force; appointment; study; report and recommendations; disclosure of reports; confidentiality of medical records and information; coordination between facilities; severability.

Repealed. April 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.

Emergency act amendments. — See note to § 32-201.

Legislative history of Law 11-212. — See note to § 32-201.

CHAPTER 2A. DISTRICT OF COLUMBIA HEALTH AND HOSPITALS PUBLIC BENEFIT CORPORATION.

Subchapter I. Declaration of Policy and Legislative Findings.

Sec.

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32-262.20. Pending administrative proceedings.

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32-263.3. Prohibition on reemployment with the District government.

Subchapter I. Declaration of Policy and Legislative Findings.

§ 32-261.1. Council declarations and findings.

The Council of the District of Columbia finds and declares the following:

(a) The residents of the District should have access to quality comprehensive community-centered health care and medical services regardless of their ability to pay for such services.

(b) The provision and delivery of comprehensive community-centered health care and medical treatment for residents of the District is of vital concern and importance and is essential to the protection and promotion of the health, safety, and welfare of the inhabitants of the District.

(c) The provision and delivery of comprehensive community-centered health care and medical treatment for residents of the District can be accomplished most efficiently and effectively by a public benefit corporation existing as an independent instrumentality of the District government and having a separate legal existence within the government.

(d) To accomplish this goal of comprehensive community-centered health care, the health care functions presently performed by the D.C. General Hospital and the community clinics of the Commission of Public Health of the Department of Human Services must be transferred to the public benefit corporation. It is the intent of the Council that this transfer be carried out without any deleterious effect on the continuity and adequacy of health care services provided to the patients being served.

(e) The establishment of a public benefit corporation will reduce expenditures, promote economy, and increase efficiency in providing health care services to residents of the District. It is the intent of the Council that the public benefit corporation established by this act will gradually assume greater financial responsibility for its operations so that it becomes financially stable and self-supporting without subsidy from the District's general fund.

(f) It is also the intent of the Council that the Mayor examine the extent to which other health and medical services presently provided by the District government can be integrated into the public benefit corporation in the future. (Apr. 9, 1997, D.C. Law 11-212, § 101, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of Chapter 2A, see §§ 101-220 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), §§ 101-220 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), §§ 101-220 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and §§ 101-220 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Section 501 of D.C. Act 12-39 provides for the application of the act.

Legislative history of Law 11-212. — Law 11-212, the "Health and Hospitals Public Benefit Corporation Act of 1996," was introduced in Council and assigned Bill No. 11-604, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 7, 1996, it was assigned Act No. 11-389 and transmitted to both Houses of Congress for its review. D.C. Law 11-212 became law on April 9, 1997.

Subchapter II. General Provisions.

§ 32-262.1. Definitions.

For the purposes of this chapter, the term:

(1) "Board" means the Board of Directors of the Corporation appointed pursuant to § 32-262.3.

(2) "Bond" or "bonds" means any revenue bond, note, or other obligation (including refunding bonds, notes, or other obligations) used to borrow money to finance, assist in financing, or to refinance undertakings authorized by this act.

(3) "Corporation" means the Public Benefit Corporation established by § 32-262.2.

(4) "Dedicated revenues" means those revenues collected pursuant to the rates, fees, and charges imposed by the Corporation for services it renders.

(5) "Health facility" means a building, structure, or unit, or any improvement to real property for the provision of health or medical services to the public, including all necessary and usual attendant and related equipment, facilities or fixtures, or any part or parts thereof, or any combination or combinations thereof, including a general hospital, ambulatory clinic or center, nursing home, extended-care facility, primary care facility, diagnostic and treatment center, dispensary, laboratory, or other related facility.

(6) "General Manager" means the person appointed by the Board as its chief executive officer pursuant to § 32-262.4(g).

(7) "Health and medical services" means items or services provided under the supervision of a physician or other person trained or licensed to render health care necessary for the prevention, care, diagnosis, or treatment of human disease, pain, injury, deformity or other physical condition including the following: pre-admission, outpatient, inpatient, and post-discharge care; home care; physician's care; nursing care; medical care provided by interns or residents in training; other paramedical care; ambulance service and care; bed and board; drugs; supplies; appliances; equipment; laboratory services; and any form of diagnostic imaging or therapeutic radiological services.

(8) "Reimbursement allowances" means any money paid by any government, agency, or subdivision thereof including payments to the Corporation which are authorized by federal law, for the cost of health and medical services furnished by the Corporation directly or through agreement with the District. (Apr. 9, 1997, D.C. Law 11-212, § 201, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-262.2. Establishment of the District of Columbia Health and Hospitals Public Benefit Corporation.

(a) There is established as a nonprofit public benefit corporation the District of Columbia Health and Hospitals Public Benefit Corporation which shall have a separate legal existence within the District government.

(b) The primary purpose of the Corporation shall be to provide comprehensive community-centered health care for the benefit of the residents of the District of Columbia.

(c) Except as provided in §§ § 32-262.4(e), 32-262.8, and 32-262.12, the Corporation shall be subject to all laws applicable to offices, agencies, departments, and instrumentalities of the District government.

(d) In effectuating the purposes of this chapter, the Corporation shall undertake the following:

(1) Grant priority to the employment of residents of the District;

(2) Make reasonable efforts to foster, encourage, and assist public/private partnerships, including managed care, in order to provide quality health and medical services on a cost effective and efficient basis;

(3) Consult and cooperate with certified employee organizations and bargaining units in order to effectuate a smooth transition from District government employment to the Corporation; and

(4) Establish procurement policies that encourage competition and utilize businesses that pay District taxes and are located within the District. (Apr. 9, 1997, D.C. Law 11-212, § 202, 43 DCR 4962.)

Section references. — This section is referred to in § 32-262.1.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

Chief Procurement Officer qualification.

— Section 2(c) of D.C. Law 12-xxx (D.C. Act 12-249) provided that nothing in that act shall affect the operations of the District of Columbia Health and Hospitals Public Benefit Corporation pursuant to this chapter.

§ 32-262.3. Board of Directors; appointment.

(a) The Corporation shall be governed by a Board of Directors consisting of 13 members; 6 members shall be appointed by the Mayor and 5 members shall be appointed by the Council. Members appointed by the Mayor shall be subject to confirmation by the Council. The Chief Financial Officer of the District of Columbia shall serve as an *ex officio* voting member. The General Manager shall serve as a nonvoting *ex officio* member. Members shall be individuals with proven business or management expertise in fields including health systems management, integrated care delivery systems, practicing physician, nursing executive, finance, and labor or contract management. Persons with the following expertise may also be represented on the Board: public health/patient advocacy; computer and information systems; legal experience; strategic planning; and philanthropic/foundation involvement.

(b) All members of the Board and the General Manager shall be residents of the District.

(c) The terms of the initial Board, other than the *ex officio* member shall be as follows: 2 members appointed by the Mayor and 2 members appointed by the Council shall serve a term of 3 years each; 2 members appointed by the Mayor and 2 members appointed by the Council shall serve a term of 2 years each; 2 members appointed by the Mayor and one member appointed by the Council shall serve a term of one year each.

(d) The Mayor shall submit the names of mayoral Board nominees to the Council within 30 days after April 9, 1997. The Council may approve or disapprove the nomination by resolution within 45 days of the date the nomination is submitted to the Council. If the Council does not adopt a resolution within the 45 days, the nomination shall be deemed approved.

(e) When a vacancy occurs by reason of expiration of a member's term, the appointing authority, pursuant to subsection (a) of this section, shall submit to the Council the name of a nominee to fill the vacancy not less than 60 days prior to the occurrence of the vacancy. Whenever a vacancy occurs by reason of death, resignation, or otherwise removal, the appointing authority shall submit the name of the nominee within 30 days following the occurrence of the vacancy. With regard to mayor appointments, the Council may approve or disapprove or disapprove the nomination by resolution within 45 days of the date the nomination is submitted to the Council. If the Council does not adopt a resolution within the 45-day period of review, the nomination shall be deemed approved.

(f) A Board member whose term has expired may continue to serve until a new member is appointed, but in no event longer than 180 days from the date of expiration of the term.

(g) The Board of Directors shall elect a chairperson from among the members to serve a term of 2 years.

(h) A Board member shall not be entitled to compensation for the Board member's service but shall be reimbursed for actual and necessary expenses incurred by the Board member in the performance of the Board member's official duties. A Board member may engage in private employment or in a profession or business unless otherwise prohibited by law.

(i) No Board member may be held personally liable for any action taken in the course of his or her official duties and responsibilities as set forth in this chapter.

(j) The Mayor shall remove any Board member from office for misconduct or neglect of duty (as defined by the Board in the Corporation's by-laws), failure to maintain District residency, or for other good cause, after notice to the Board member and the Board.

(k) If a Board member is charged with a misdemeanor or felony, the Board member shall be immediately suspended. If the Board member is found guilty, the term of the Board member shall be automatically terminated.

(l) The Board shall maintain regular contact with the Commissioner of Public Health (or the director of the entity that succeeds the Commission of Public Health). The Board shall meet with the Commissioner upon the Commissioner's request. (Apr. 9, 1997, D.C. Law 11-212, § 203, 43 DCR 4962; Oct. 8, 1997, D.C. Law 12-43, § 2(a), 44 DCR 5763.)

Section references. — This section is referred to in §§ 32-262.1 and 32-262.4.

Effect of amendments. — D.C. Law 12-43, in (a), substituted "13 members" for "12 members" in the first sentence, and inserted the present third sentence.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

For temporary amendment of section, see § 2(a) of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board promulgations, and conditional Approval of Organizational and Operational Plan Emergency Amendment Act of 1997 (D.C. Act 12-137, September 30, 1997, 44 DCR 5765), and see § 2(a) of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board Promulgations, and Conditional Approval of Organizational and Operational Plan Congressional Review Emergency Amendment

Act of 1997 (D.C. Act 12-242, January 13, 1998, 45 DCR 638).

Section 5 of D.C. Act 12-242 provided for application of the act.

Legislative history of Law 11-212. — See note to § 32-261.1.

Legislative history of Law 12-43. — Law 12-43, the "CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board Promulgations, and Approval of Organizational and Operational Plan Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-109, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 3, 1997, and June 17, 1997, respectively. Signed by the Mayor on _____, 1997, it was assigned Act No. 12-127 and transmitted to both Houses of Congress for its review. D.C. Law 12-43 became effective on October 8, 1997.

§ 32-262.4. Governance of the Corporation.

(a) The powers of the Corporation shall be vested in and exercised by the Board. Action of the Board may be taken at a meeting duly held at a time fixed in accordance with the bylaws. The Board shall adopt internal rules for conduct of Board meetings.

(b) The presence of 6 voting Board members shall constitute a quorum of the Board for purposes of conducting meetings and no action of the Board shall be taken except by a favorable vote of at least a majority of the Board members present at a meeting at which a quorum is in attendance.

(c) The Board shall hold an annual meeting, upon published notice to the public, at which time the board shall receive its annual report from the General Manager. The Board shall inform the public about its programs and plans at the annual meeting.

(d) The Board shall meet no less than once per month, at least 10 months each year. All board meetings shall be subject to the provisions of § 1-1504.

(e) The Corporation shall be subject to subchapter III of Chapter 15 of Title 1, except that the Corporation shall not be compelled to provide access to records, or any part of a record, that concern the initiation or modification of patient care programs or other potentially commercially valuable plans, analyses, evaluations, or programs, or to any other information which may be of competitive advantage in the operation of the Corporation if disclosure is likely to give an unfair competitive or bargaining advantage to any other person or entity.

(f) The fiscal year of the Corporation shall coincide with the fiscal year of the District government.

(g) The Board shall appoint a General Manager to be in charge of the day-to-day affairs of the Corporation. The Board shall conduct, within 120 days of the first meeting of the Board pursuant to subsection (h) of this section, a national search to fill the position of General Manager. The General Manager shall serve at the pleasure of the Board. The General Manager shall be the chief executive officer of the Corporation and *ex officio* member of the board of directors with full voice but no vote. The General Manager shall perform other duties as determined by the Board.

(h) The Board shall hold its first meeting no later than 15 days from the date of appointment of at least 8 Board members in accordance with § 32-262.3(d). (Apr. 9, 1997, D.C. Law 11-212, § 204, 43 DCR 4962.)

Section references. — This section is referred to in §§ 32-262.1, 32-262.2, 32-262.7, 32-262.8, and 32-262.19.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

For temporary delay of the effective date of § 402 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, see § 501(c) of the Health and Hospitals Public Benefit corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937, § 501(c), and the Health and Hospitals Public Benefit Corporation Congressional Re-

view Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093, and § 501(c) of the Health and Hospitals Public Benefit Corporation Second congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634.

Legislative history of Law 11-212. — See note to § 32-261.1.

Effective date of § 402 of D.C. Law 11-212. — Section 501(c) of the D.C. Law 11-212 provides that § 402 of the act shall become effective upon the first meeting of the Board pursuant to § 32-262.4.

§ 32-262.5. Powers of the Corporation.

In addition to the power to issue obligations pursuant to § 32-262.15, the Corporation shall have the following powers:

(a) To do any and all things necessary and proper to carry out its corporate purposes, and for the exercise of the powers given to it in this chapter;

(b) To sue and be sued in its corporate name;

(c) To adopt a corporate seal and alter the seal at its pleasure;

(d) To adopt, amend and repeal bylaws, rules, and regulations governing the manner in which it may conduct business and how the powers vested in it may be exercised;

(e) To borrow money for any of its corporate purposes and to provide for the payment of the same, as may be permitted under the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 777; D.C. Code § 1-201 *passim*) and the laws of the District;

(f) To issue regulations and establish policies for contracting and procurement which are consistent with principles of competitive procurement and to make and execute contracts, leases and all other agreements or instruments necessary and appropriate for the exercise of its powers and the fulfillment of its corporate purposes;

(g) Except with respect to those assets made available for the Corporation's use under § 32-262.7(a), to acquire, construct, and dispose of real or personal property of every kind and character, including a health facility, or any interest therein for its corporate purposes and shall seek public comment before leasing, acquiring, or disposing of property for other than health care purposes;

(h) To operate, manage, superintend, maintain, repair, equip, and control any health facility under its jurisdiction and to establish and collect fees, rentals or other charges, including reimbursement allowances, for the sale, lease, or sublease of any such health facility;

(i) To provide health and medical services to the public directly or by agreement with any person, firm, or private or public corporation or association, to establish policies governing admissions and health and medical services, and to establish and collect fees and other charges, including reimbursement allowances, for the provision of the health and medical services the Corporation provides;

(j) To provide and maintain resident physician and intern medical services and to sponsor and conduct research, development, planning, evaluation, educational, and training programs;

(k) To provide additional services consistent with its corporate purposes, including an ambulance service to transport patients, and to adopt a schedule of appropriate charges for additional services and to provide for the collection thereof;

(l) To determine the conditions under which health care professionals may be extended the privilege of practicing within a health facility under the jurisdiction of the Corporation and to promulgate reasonable policies and procedures for the conduct of all persons within any staff facility consistent with District law;

(m) To employ officers, executives, and management personnel, who formulate or participate in the formulation of the plans, policies, and standards, or who administer, manage, or operate the Corporation, to fix their

qualifications, prescribe their duties and other terms of employment, compensation, and benefits; except, that such personnel shall be excluded from collective bargaining representation;

(n) To employ such other employees as may be necessary and to develop policies and procedures that are based on merit and that relate to terms and conditions of employment, compensation, and benefits;

(o) To apply for and to receive any gifts or grants of money, real or personal property, services or other aid, including any reimbursement allowance for use by the Corporation in carrying out its corporate purposes and in the exercise of its powers and to negotiate for the same upon such conditions as the Corporation may determine to be necessary, convenient, or desirable;

(p) To invest any funds in accordance with District law;

(q) To procure insurance, or obtain indemnification, against any loss in connection with the assets of the Corporation or any liability in connection with the activities of the Corporation, such insurance or indemnification to be procured or obtained in such amounts, and from such sources, as the Corporation deems to be appropriate;

(r) To enter into agreements with any organization, public or private, including any local, state, regional, or federal agency, for goods and services as needed to achieve its purposes; except, that:

(1) Prior to the Corporation contracting out to a private entity a service or activity performed by employees of the Corporation, through established standards developed by rules and regulations, the Corporation shall establish that the contracting out will achieve increased efficiencies and cost savings to the Corporation; and

(2) The Corporation shall establish procedures for permitting employees to submit bids or proposals to contract with the Corporation as appropriate and in accordance with this chapter;

(s) To retain or employ auditors, engineers, and private consultants on a contract basis, or otherwise, for rendering professional, management, or technical services and advice;

(t) To engage in joint ventures, or to participate in networks, alliances, consortia, pools, and other cooperative arrangements with any public or private entity; and

(u) To issue revenue bonds pursuant to § 32-262.15.

(v) To establish a community advisory board pursuant to § 32-262.9. (Apr. 9, 1997, D.C. Law 11-212, § 205, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

References in text. — Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786 pro-

vided that any reference in law or regulation to the “District of Columbia Self-Government and Governmental Reorganization Act” shall be deemed to be a reference to the “District of Columbia Home Rule Act,” which is set out in Volume 1.

§ 32-262.6. Health and Hospitals Public Benefit Corporation Fund.

(a) There is established the District of Columbia Health and Hospital Public Benefit Corporation Fund ("Fund") to be operated by the Corporation.

(b) The monies in the Fund shall not be a part of, nor lapse into, the General Fund of the District or any other fund of the District.

(c) Beginning on the date of transfer pursuant to § 32-262.7(a), any and all dedicated revenues collected by the Mayor as agent for the Corporation shall be deposited in the Fund on a monthly basis for the payment of all expenses incurred by the Corporation.

(d) Any pledge by the Corporation of any funds on deposit in the Fund shall be effective, valid, perfected, and binding from the time the pledge is made with or without the delivery of any funds, and with or without any further action. Such pledge shall be effective, valid, perfected, and binding whether or not any statement, document, or instrument relating to such pledge is recorded or filed. The pledged revenues shall be immediately subject to the lien of the pledge, whether or not there has been any physical delivery. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against any person receiving the distribution of revenues, whether or not the parties have notice of the pledge. (Apr. 9, 1997, D.C. Law 11-212, § 206, 43 DCR 4962.)

Section references. — This section is referred to in § 32-262.7.

Legislative history of Law 11-212. — See note to § 32-261.1.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

§ 32-262.7. Transfer of functions to the Corporation.

(a) As expeditiously as possible but no later than 6 months from the date of the first meeting of the Board held pursuant to § 32-262.4(h):

(1) The Board shall develop and prepare an operational and organizational plan to carry out its responsibilities pursuant to this chapter, which shall be submitted to the Council for review and approval.

(2) The Board shall promulgate policies, practices, and procedures relating to terms and conditions of employment of personnel employed by the Corporation.

(3) The Board shall issue regulations governing contracting and procurement.

(3A) The Board shall submit the policies, practices, procedures, and regulations that it promulgates and issues pursuant to paragraphs (2) and (3) of this subsection, consistent with the District of Columbia Financial Plan and Budget, to the Council by September 16, 1997, for a 45-day period of review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the policies, practices, procedures, or regulations, in whole or in part, by resolution within the 45-day review

period, the policies, practices, procedures, or regulations shall be deemed approved.

(4) After Council approval, the Mayor shall transfer to the Corporation's management and control the functions, assets, property, records, and obligations of the following:

(A) The District of Columbia General Hospital, established pursuant to Organization Order No. 141, effective February 11, 1964, and subsumed under the administration of the D.C. General Hospital Commission pursuant to § 32-211; and

(B) The community health clinics, Bureau of Dental Health Services, Bureau of Maternal and Child Health Services, the Bureau of Laboratories of the Ambulatory Health Care Administration, the Bureau of School Nursing, and in-home medical, nursing care and social services referrals for the chronically ill provided by the Long-Term Care Administration of the Commission of Public Health of the Department of Human Services, established under Reorganization Plan No. 2 of 1979, effective February 21, 1980.

(5) The Mayor shall transfer to the Fund established by § 32-262.6 the unexpended balances of appropriations, allocations, and other funds of the following:

(A) The District of Columbia General Hospital, established pursuant to Organization Order No. 141, effective February 11, 1964, and subsumed under the administration of the D.C. General Hospital Commission pursuant to § 32-211; and

(B) The community health clinics, Bureau of Dental Health Services, Bureau of Maternal and Child Health Services, the Bureau of Laboratories of the Ambulatory Health Care Administration, and in-home medical, nursing care and social services referrals for the chronically ill provided by the Long-Term Care Administration of the Commission of Public Health of the Department of Human Services, established under Reorganization Plan No. 2 of 1979, effective February 21, 1980.

(6) The District and the Board shall enter into an agreement to delineate how the expenses allocated to the continuation of employees benefits pursuant to § 32-262.8 shall be allocated between the District and the Corporation.

(b) The District government shall retain full legal title to, and a complete equitable interest in, all assets made available for the Corporation's use pursuant to subsection (a) of this section.

(c) The Corporation shall provide the services formerly provided by the District of Columbia General Hospital and those components of the Commission of Public Health transferred pursuant to subsection (a) of this section, beginning on that date.

(d) The District shall enter into an annual agreement to compensate the Corporation for (1) health and medical services provided to individuals who are wards of the District or for whom the District is required by law to pay, (2) uncompensated services provided to District residents, and (3) other services specified in the agreement. The annual agreement shall require specific performance measures to be submitted by the Corporation to the Mayor. The annual agreement shall delineate the standards of performance and quality health care required by the Corporation and its contractors.

(e) On the date of the Board's first meeting pursuant to § 32-262.4(h), the Mayor shall transfer all funds in the D.C. General Hospital Fund established pursuant to § 32-242, for both operating and capital expenses, to the Fund established by § 32-262.6. (Apr. 9, 1997, D.C. Law 11-212, § 207, 43 DCR 4962; Mar. 20, 1998, D.C. Law 12-60, § 801, 44 DCR 7378; Oct. 8, 1997, D.C. Law 12-43, § 2(b), 44 DCR 5763.)

Section references. — This section is referred to in §§ 32-262.5, 32-262.6, 32-262.8, and 32-263.1.

Effect of amendments. — D.C. Law 12-43 added (a)(3A).

D.C. Law (D.C. Act 12-191) inserted "the Bureau of School Nursing" in (a)(4)(B).

Temporary amendment of section. — Section 801 of D.C. Law 12-59 inserted "the Bureau of School Nursing" in (a)(4)(B).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

For temporary amendment of section, see § 2(b) of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board promulgations, and conditional Approval of Organizational and Operational Plan Emergency Amendment Act of 1997 (D.C. Act 12-137, September 30, 1997, 44 DCR 5765), and see § 2(b) of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board Promulgations, and Conditional Approval of Organizational and Operational Plan Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-242, January 13, 1998, 45 DCR 638).

Section 5 of D.C. Act 12-242 provided for application of the act.

For temporary amendment of section, see § 801 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 801 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 11-212. — See note to § 32-261.1.

Legislative history of Law 12-43. — See note to § 32-262.3.

Legislative history of Law 12-59. — Law 12-59, the "Fiscal Year 1998 Revised Budget Support Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the "Fiscal Year 1998 Revised Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Review and approval of the Organizational and Operational Plan for the D.C. Health and Hospitals Public Benefit Corporation. — For approval of the Organizational and Operational Plan for the District of Columbia Health and Hospitals Public Benefit Corporation, on an emergency basis; provided, that the Chief Financial Officer certifies that the Organizational and Operational Plan is consistent with the District of Columbia Financial Plan and Budget, see § 3 of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council review of Board Promulgations, and Conditional Approval of Organizational and Operational Plan Emergency Amendment Act of 1997 (D.C. Act 12-137, September 30, 1997, 44 DCR 5765), and see § 3 of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board Promulgations, and Conditional Approval of Organizational and Operational Plan Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-242, January 13, 1998, 45 DCR 638).

Approval of Organizational and Operational Plan. — Section 3 of D.C. Law 12-43 provided that the Council has reviewed and approves the Organizational and Operational Plan for the District of Columbia Health and

Hospitals Public Benefit Corporation; provided, that the Chief Financial Officer certifies that the Organizational and Operational Plan is consistent with the District of Columbia Financial Plan and Budget.

§ 32-262.8. Personnel Administration.

(a) Except as provided by subsections (b) and (c) of this section, no provision of subchapter I of Chapter 6 of Title 1 (“CMPA”), shall apply to employees of the Corporation, except as follows:

(1) Subchapters V and XVIII of Chapter 6 of Title 1 shall apply to all employees of the Corporation; and

(2) Subchapters XIII, XXII, XXIII, and XXVII shall apply to employees transferred to the Corporation who are covered under the Civil Service Retirement System and the District of Columbia Defined Contribution Pension Plan; provided, that all Corporation employees continuously employed by the District government since December 31, 1979, shall be guaranteed rights and benefits at least equal to those currently applicable to such persons under provisions of law and rules and regulations in force prior to the effective date of this chapter.

(b) The salary cap on the rate of pay applicable under subchapter XVIII of Chapter 6 of Title 1 shall not apply to employees of the Corporation. The Corporation shall have sole authority with respect to the development and approval of compensation agreements.

(c) Within 6 months of the first meeting of the Board in accordance with § 32-262.4(h) the Corporation shall promulgate policies, practices, and procedures relating to terms and conditions of employment for personnel employed by the Corporation. Until the Corporation establishes a personnel system, consistent with the scope of bargaining as prescribed in subchapter XVIII of Chapter 6 of Title 1, the CMPA and its implementing rules and regulations shall continue to apply to the Corporation.

(d) Every employee who is an employee of the District within a department or agency whose functions are transferred to the Corporation pursuant to this act shall:

(1) Be transferred to the Corporation in the same classification held at the time of the transfer; and

(2) Retain all rights and privileges which relate to the employee’s retirement status, so long as continuously employed by the Corporation without a break in service.

(e) If the Mayor determines that it is in the financial interest of the Corporation, the Mayor may offer an early out retirement, easy out retirement, or voluntary severance incentive program to employees whose functions are being transferred. Any program offered by the Mayor shall meet the requirements of §§ 32-263.1 to 32-263.3. The Mayor shall request early out retirement authorization from the United States Office of Personnel Management.

(f) An employee of the Corporation who is covered under the District of Columbia Defined Contribution Pension Plan, who meets the minimum

requirements for participation in a retirement plan established by the Corporation, may upon written notice to the Corporation, elect, instead, to be covered by the Corporation's plan.

(g)(1) An employee who is involuntarily separated for nondisciplinary reasons from the Corporation within 6 months after the effective date of this chapter shall be entitled to priority reemployment consideration by the District government.

(2) An employee who is involuntarily separated for nondisciplinary reasons from District government health services employment within 6 months before the effective date of this act and within 6 months after completion of the transfer of employees to the Corporation pursuant to § 32-262.7, shall also be given priority reemployment rights under the employee's respective collective bargaining agreement. In addition, any employee who is displaced within 12 months of the date of transfer under § 32-262.7, due to the creation, expansion, or reduction of the Corporation, shall have 12 months priority reemployment consideration following the date of displacement.

(h) The Corporation shall assume and be bound by all existing collective bargaining agreements with labor organizations that have been duly certified by the District of Columbia Public Employee Relations Board to represent employees transferred to the Corporation until successor agreements have been negotiated. Negotiations between the Corporation and the labor organizations that have been certified to represent its employees shall commence not later than 180 days after the first meeting of the Board.

(i) This section shall not be construed to limit the right of the Corporation to reorganize, restructure, reclassify, or eliminate positions.

(j) Nothing in this section or §§ 1-618.1 to 1-618.17, shall preclude the establishment of an appropriate bargaining unit, within the Corporation, by the District of Columbia Public Employee Relations Board. Within 120 days of the first meeting of the Board, in accordance with § 32-262.4(h), the District of Columbia Public Employee Relations Board shall investigate and render determinations regarding the establishment of the appropriate units for working conditions and compensation within the Corporation and, pursuant to applicable statutory and regulatory provisions, certify labor organizations as the exclusive bargaining agents for these units. (Apr. 9, 1997, D.C. Law 11-212, § 208, 43 DCR 4962.)

Section references. — This section is referred to in §§ 32-262.2 and 32-262.7.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-262.9. Advisory board establishment.

The Corporation shall establish a community advisory board, representative of the community served by the Corporation, to consider and advise the Corporation upon matters concerning plans and programs of the Corporation. The community advisory board shall include one member who is a representative from the District's private nonprofit community health clinics. No

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member of such advisory board shall receive compensation or allowance for services rendered on such board, except that members of community advisory boards may be reimbursed for necessary expenses as approved by the Board. (Apr. 9, 1997, D.C. Law 11-212, § 209, 43 DCR 4962.)

Section references. — This section is referred to in § 32-262.5.

Legislative history of Law 11-212. — See note to § 32-261.1.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

§ 32-262.10. Submission of budgets.

The Board shall submit the Fiscal Year 1998 operating budget and all subsequent operating budgets for the Corporation to the Mayor on the date that other District departments and agencies are required to submit their budgets to the Mayor. (Apr. 9, 1997, D.C. Law 11-212, § 210, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-262.11. Conflict of interest.

(a) The personnel system developed by the Corporation and the General Manager, shall include rules that require that no employee shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts, or would appear to conflict, with the fair, impartial, and objective performance of the employee's assigned duties and responsibilities.

(b) No member of the Board shall be in any manner interested, directly or indirectly, as principal, surety, or otherwise in a contract, where the expense or consideration of the contract is payable out of the funds of the Corporation. (Apr. 9, 1997, D.C. Law 11-212, § 211, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-262.12. Procurement law inapplicable.

Subchapter I of Chapter 11 of Title 1 shall not apply to the Corporation. (Apr. 9, 1997, D.C. Law 11-212, § 212, 43 DCR 4962.)

Section references. — This section is referred to in § 32-262.2.

Legislative history of Law 11-212. — See note to § 32-261.1.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

§ 32-262.13. Exemption from taxation.

The assets and income of the Corporation shall be exempt from taxation. (Apr. 9, 1997, D.C. Law 11-212, § 213, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-262.14. Delegation of Council authority to issue bonds.

The Council delegates to the Corporation the power of the Council under § 47-334, to issue revenue bonds, notes, and other obligations to finance, refinance, or assist in the financing or refinancing of any undertakings of the Corporation pursuant to this chapter. (Apr. 9, 1997, D.C. Law 11-212, § 214, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, see § 501(b) of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), § 501(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), and § 501(b) of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public

Benefit Corporation Congressional Review Emergency Act of 1997, see § 601(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 11-212. — See note to § 32-261.1.

Effective date of §§ 214 through 217 of D.C. Law 11-212. — Section 501(b) of D.C. Law 11-212 provided that §§ 214 through 217 of the act shall take effect upon the enactment by Congress of the legislation proposed in Title III of the act or of substantially similar legislation.

Council authority to delegate broadened. — Section 11508 of Pub. L. 105-33, 111 Stat. 773, gave Council broad authority to delegate its power to issue revenue bonds.

§ 32-262.15. Power of the Corporation to issue bonds, notes, and other obligations.

(a) The Corporation may at any time, and from time to time, issue bonds and notes or other obligations (including refunding bonds, notes, or other obligations), by resolution, in one or more series to finance or refinance the cost of acquiring or leasing property and of establishing, constructing, erecting, altering, improving, and modernizing health care facilities. The resolution shall name the chairman of the Board or the chairman's designee as the authorized delegate to execute all documents related to the bond financings or refinancings. In addition, the Corporation may issue notes to renew notes and bonds to pay notes, including the interest thereon. Whenever expedient, the Corporation may refund bonds by the issuance of new bonds.

(b) Bonds of the Corporation are obligations payable from revenues of the Corporation from whatever source derived, including certain dedicated reve-

nues, earnings on the Fund, and any other funds available to the Corporation which may lawfully be used for these purposes.

(c) Regardless of their form or character, bonds of the Corporation are negotiable instruments for all purposes of the Uniform Commercial Code of the District of Columbia, approved December 30, 1963 (77 Stat. 631; D.C. Code § 28:1-101 *et seq.*), subject only to the provisions of the bonds and notes for registration.

(d) No official, employee, or agent of the Corporation shall be held personally liable solely because a bond or note is issued.

(e) The issuance and performance of bonds, notes, and other obligations by the Corporation as contemplated in this chapter and the adoption of resolutions authorizing such bonds, notes, and other obligations shall be done in compliance with the requirements of this chapter, but shall not be subject to subchapter I of Chapter 15 of Title 1.

(f) The Corporation shall have the power to borrow money and to issue revenue bonds, notes, and other obligations regardless of whether or not the interest payable by the Corporation incident to such loans, notes, and other obligations or revenue bonds or the income derived by the holders of the evidence of such indebtedness or revenue bonds notes, and other obligations is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxation on the recipients.

(g) The Corporation shall have the power to contract with the holders of its notes or bonds as to the custody, collection, securing, investment, and payment of any monies of the Corporation and of any monies held in trust or otherwise for the payment of notes or bonds. (Apr. 9, 1997, D.C. Law 11-212, § 215, 43 DCR 4962.)

Section references. — This section is referred to in § 32-262.5.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997, see § 601(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 11-212. — See note to § 32-261.1.

Effective date of §§ 214 through 217 of D.C. Law 11-212. — Section 501(b) of D.C. Law 11-212 provided that §§ 214 through 217 of the act shall take effect upon the enactment by Congress of the legislation proposed in Title III of the act or of substantially similar legislation.

Council authority to delegate broadened. — Section 11508 of Pub. L. 105-33, 111 Stat. 773, gave Council broad authority to delegate its power to issue revenue bonds.

§ 32-262.16. Terms for sale of bonds; additional bond and note provisions.

(a) The Corporation may stipulate by resolution the terms for sale of its bonds in accordance with this chapter, including the following:

(1) The date a note or bond bears;

(2) The date a bond or note matures; provided, that notes shall not mature later than 10 years from the date of original issuance and bonds shall not mature later than 50 years from the date of original issuance;

(3) Whether bonds are issued as serial bonds, as term bonds, or a combination of the two;

(4) The denomination;

(5) Any interest rate or rates, or variable rate or rates changing from time to time, or premium or discount applicable;

(6) The registration privileges;

(7) The medium and method for payment; and

(8) The terms of redemption.

(b) The Corporation may sell its bonds at public or private sale and may determine the price for sale.

(c) A resolution authorizing the sale of bonds may contain any of the following provisions, in which case these provisions shall be made part of the contract with holders of the bonds:

(1) The proposed custody, security, expenditure, or application of proceeds of the sale of bonds or notes of the Authority ("proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(2) A pledge of Corporation revenues to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(3) A pledge of assets of the Corporation other than those assets which the Mayor allows the Corporation to use through an intra-District transfer, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(4) The proposed use of gross income from any mortgages owned by the Corporation and payment of principal of mortgages owned by the Corporation;

(5) The proposed use of reserves or sinking funds;

(6) The proposed use of proceeds from the sale of bonds or notes and a pledge of proceeds to secure payment;

(7) Any limitations on the issuance of bonds or notes, including terms of issuance and security, and the refunding of outstanding or other bonds;

(8) Procedures for amendment or abrogation of a contract with holders of the bonds, the amount of bonds or notes, the holders of which must consent to the amendment, and the manner in which consent may be given;

(9) Any vesting in a trustee of property, power, and duties, which may include the power and duties of a trustee appointed by holders of the bonds;

(10) Limitations or abrogations of the right of holders of the bonds to appoint a trustee;

(11) A defining of the nature of default in the obligations of the Corporation to the holders of the bonds and providing the rights and remedies of holders of the bonds in the event of default, including the right to the appointment of a receiver, in accordance with the laws of the District; and

(12) Any other provisions of like or different character that affect the security of holders of the bonds.

(d) A pledge of the Corporation is binding from the time it is made. Any funds or property pledged are subject to the lien of a pledge without physical delivery. The lien of a pledge is binding as against parties having any tort, contract, or other claim against the Corporation regardless of notice. Neither the resolution nor any other instrument creating a pledge need be recorded.

(e) The signature of any officer of the Corporation which appears on a bond remains valid if that person ceases to hold office.

(f) The Corporation may secure bonds by a trust indenture between the Corporation and a corporate trustee which has trust company powers within the District.

(g) A trust indenture of the Corporation may contain provisions for protecting and enforcing the rights and remedies of holders of the bonds in accordance with the provisions of the resolution authorizing the sale of bonds.

(h) Subject to preexisting agreements with the holders of the bonds or notes, the Corporation may purchase its own bonds which may then be cancelled. The price the Corporation pays in purchasing its own bonds cannot exceed the following limits:

(1) If the bonds are redeemable, the price cannot exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds are not redeemable, the price cannot exceed the redemption price applicable on the first date after the purchase upon which the bonds or notes become subject to redemption plus accrued interest to that date.

(i) The Corporation may establish special or reserve accounts in furtherance of its authority under this chapter. Notwithstanding subsections (a) and (b) of this section and other applicable District law, and subject to agreements with holders of the bonds, the Corporation shall manage its own funds, and may invest funds not required for disbursement in a manner consistent with industry practices.

(j) The bonds of the Corporation are legal instruments in which public officers and public bodies of the District, insurance companies, insurance company associations, and other persons carrying on an insurance business, banks, bankers, banking institutions, including savings and loan associations, building and loan associations, trust companies, savings banks, savings associations, investment companies, and other persons carrying on a banking business, administrators, guardians, executors, trustees, and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(k) Obligations issued under the provisions of this chapter do not constitute an obligation of the District, but are payable solely from the revenues of the Corporation. Each obligation issued under this act must contain on its face a statement that the Corporation is not obligated to pay principal or interest except from the revenues pledged and that neither the faith and credit nor the taxing power of the District is pledged to the payment of the principal or interest on an obligation. (Apr. 9, 1997, D.C. Law 11-212, § 216, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997, see § 601(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 11-212. — See note to § 32-261.1.

Effective date of §§ 214 through 217 of D.C. Law 11-212. — Section 501(b) of D.C. Law 11-212 provided that §§ 214 through 217 of the act shall take effect upon the enactment by Congress of the legislation proposed in Title III of the act or of substantially similar legislation.

§ 32-262.17. District pledges.

The District pledges to the Corporation and any holders of bonds that the District will not limit or alter rights vested in the Corporation to fulfill agreements made with holders of the bonds, or in any way impair the rights and remedies of the holders of the bonds until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the bonds are fully met and discharged. The Corporation is authorized to include this pledge of the District in any agreement with the holders of the bonds. (Apr. 9, 1997, D.C. Law 11-212, § 217, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997, see § 601(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 11-212. — See note to § 32-261.1.

Effective date of §§ 214 through 217 of D.C. Law 11-212. — Section 501(b) of D.C. Law 11-212 provided that §§ 214 through 217 of the act shall take effect upon the enactment by Congress of the legislation proposed in Title III of the act or of substantially similar legislation.

§ 32-262.18. Reports of the Corporation.

Within 90 days after the end of each fiscal year the Corporation shall submit to the Mayor a report setting forth its operations and accomplishments during the fiscal year, revenues and expenses for the fiscal year, assets and liabilities at the end of the fiscal year including a schedule of its bonds, notes or other obligations and the status of reserves, depreciation, and special, sinking, or other funds. (Apr. 9, 1997, D.C. Law 11-212, § 218, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-262.19. Representation and indemnification.

(a) The officers and employees of the Corporation shall be considered to be District government employees for purposes of subchapter II of Chapter 12 of Title 1, except that beginning 2 years from the date of the Board's first meeting

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under § 32-262.4(h) all settlements and judgments shall be payable out of the monies of the Corporation.

(b) The District shall assume the responsibility for all settlements and judgements that result from acts or occurrences which transpired prior to the date upon which the Corporation assumes responsibility for settlements and judgements under subsection (a) of this section. (Apr. 9, 1997, D.C. Law 11-212, § 219, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-262.20. Pending administrative proceedings.

(a) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this chapter.

(b) Administrative adjudications occurring after an employee is transferred under this chapter but relating to his or her employment in the Department of Human Services prior to transfer shall not be the responsibility of the Corporation. (Apr. 9, 1997, D.C. Law 11-212, § 220, 43 DCR 4962.)

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-263.1. Easy out retirement incentive program and early out retirement incentive program.

(a) Pursuant to § 1-612.6, the Council of the District of Columbia approves the proposed changes to the Career and Excepted Service compensation system under § 1-612.4(e), to authorize the Mayor to establish retirement incentive programs for certain employees subject to transfer to the Corporation.

(b) The changes to the compensation system provide that:

(1) The Mayor is authorized to establish retirement incentive programs ("programs") which shall apply to eligible employees subject to transfer to the Corporation.

(2) Any such program shall be effective for any period or periods established by the Mayor prior to the establishment of the Corporation's own personnel system.

(3) The Mayor may exclude positions from or limit participation in these programs based on the needs of the government.

(4) The easy out retirement incentive program shall be limited to employees retiring under the optional retirement provisions of 5 U.S.C. 8336(a), (b), or (f).

(5) The early out retirement incentive program shall be limited to employees retiring under the voluntary early retirement provisions of 5 U.S.C. 8336(d)(2).

(6) Each program shall offer a retirement incentive of 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which

was in effect on the first day of the fiscal year in which the program is in effect, not to exceed \$24,000, to be paid within one year of the employee's retirement.

(7) Retirement incentive payments shall be prorated in the case of a part-time employee.

(8) An employee otherwise eligible to retire under 5 U.S.C. 8336(a), (b), (f), or (d)(2) who elects the retirement incentive, may be retained in service by the Director of Personnel upon written determination that the services of the eligible employee are essential and required after the date elected by the employee, provided that the Director of Personnel specifies the date after which the employee's services will no longer be needed, which may be no later than the effective date of the Corporation's own personnel system and the employee retires after the last day on which his or her services are required, but not later than the effective date of the Corporation's own personnel system.

(9) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

(10) No incentive payments shall be paid to:

(A) An employee retiring under the discontinued service/involuntary retirement provisions of 5 U.S.C. 8336(d)(1), or the disability retirement provisions of 5 U.S.C. 8337;

(B) A person employed as a reemployed annuitant under the provisions of 5 U.S.C. 8344 who separates from District service, whether or not he or she applies for a recomputation of his or her annuity;

(C) An employee who is receiving disability compensation under § 1-624.16, who retires and who elects to remain on disability compensation in lieu of a retirement annuity;

(D) An employee who receives a proposal or a final decision notice of removal for cause;

(E) An employee whose services have been determined as essential by the Director of Personnel if the employee retires before the date specified in writing by the Director of Personnel as the date after which the employee's services are no longer needed;

(F) An employee who is under indictment for or who is charged by information with, or who has been convicted of, a felony related to his or her employment duties, except that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony; or

(G) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who pleads guilty or who is convicted after a plea of *nolo contendere* to a misdemeanor.

(11) For the purposes of paragraph (10)(F) of this subsection, "felony" means an offense that is punishable by term of imprisonment that exceeds one year.

(c) Employees shall have 30 days from the date of transfer under § 32-262.7 in which to exercise options under this section. (Apr. 9, 1997, D.C. Law 11-212, § 403, 43 DCR 4962.)

Section references. — This section is referred to in §§ 32-262.8 and 32-263.3.

Legislative history of Law 11-212. — See note to § 32-261.1.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

§ 32-263.2. Voluntary severance incentive program.

(a) Pursuant to § 1-612.6, the Council of the District of Columbia approves the proposed changes to the Career and Excepted Service compensation system under § 1-612.4(e), to authorize the Mayor to establish a voluntary severance incentive program for certain employees subject to transfer to the Corporation.

(b) The changes to the compensation system provide that:

(1) The Mayor is authorized to establish a voluntary severance incentive program ("program") which shall apply to eligible employees subject to transfer to the Corporation who choose to voluntarily sever employment with the District of Columbia government.

(2) Any such program shall be effective for any period or periods established by the personnel authority prior to the effective date of this chapter.

(3) The Mayor may exclude positions from or limit participation in this program based on the needs of the government.

(4) The voluntary severance incentive program shall offer a severance incentive in a lump sum to be paid within 1 year of the employee's separation, according to the following schedule: Length of Service Benefit 2 years up to 5 years Greater of \$5,000 or 5 weeks of pay 5 years up to 7 years Greater of \$7,000 or 6 weeks of pay 7 years up to 10 years Greater of \$8,500 or 8 weeks of pay Over 10 years \$10,000.

(5) In no case shall the amount of the voluntary severance incentive exceed \$10,000.

(6) The voluntary severance incentive shall not be available to part-time employees.

(7) The voluntary severance incentive shall extend to any full-time employee subject to transfer to the Corporation who is covered by subchapter I of Chapter 6 of Title 1, who has been continuously employed with the District of Columbia government without a break in service for the period commencing 2 years prior to the beginning of any voluntary severance incentive program implemented under this authority.

(8) Voluntary severance incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

(9) No incentive payments shall be paid to:

(A) An employee appointed to the Excepted Service under §§ 1-610.3(a)(1) and (2) and 1-610.8;

(B) An employee appointed to the Executive Service under § 1-611.1;

(C) An employee who works a part-time tour of duty;

(D) An employee who is in a time-limited appointment, i.e., temporary or term;

(E) An employee who receives a proposal or a final decision notice of removal for cause;

(F) An employee retiring under the discontinued service/involuntary retirement provisions of 5 U.S.C. 8336(d)(1), or the disability retirement provisions of 5 U.S.C. 8337;

(G) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. 8344;

(H) An employee who has received a notice of separation from the District government pursuant to reduction-in-force procedures;

(I) An employee who is under indictment for or who is charged by information with, or who has been convicted of, a felony related to his or her employment duties, except that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony; or

(J) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who pleads guilty or who is convicted after a pleas of *nolo contendere* to a misdemeanor.

(10) For the purposes of paragraph (9)(I) of this subsection, "felony" means an offense that is punishable by a term of imprisonment that exceeds one year.

(c) Employees shall have 30 days from the date of transfer under § 32-262.7 in which to exercise options under this section. (Apr. 9, 1997, D.C. Law 11-212, § 404, 43 DCR 4962.)

Section references. — This section is referred to in § 32-263.3.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

§ 32-263.3. Prohibition on reemployment with the District government.

An employee who receives an incentive payment pursuant to either § 32-263.1 or § 32-263.2 shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as sole source consultant or personal services contractor for 5 years from the date of retirement. (Apr. 9, 1997, D.C. Law 11-212, § 405, 43 DCR 4962.)

Section references. — This section is referred to in § 32-262.8.

Emergency act amendments. — For temporary addition of chapter, see note to § 32-261.1.

Legislative history of Law 11-212. — See note to § 32-261.1.

CHAPTER 3. CERTIFICATE OF NEED.

Sec.

32-301 to 32-317. [Repealed].

§§ 32-301 to 32-317. Purpose; definitions; when required; adoption of procedures and criteria governing review; required findings; issuance of emergency certificate; duration, modification, sale or transfer of certificate; reconsideration of decisions; administrative review; judicial review; issuance of certificate as condition precedent; violations; immunity from legal liability; moratorium on applications; annual report; adoption of regulations; severability.

Repealed. Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.

Legislative history of Law 9-197. — Law 9-197 was introduced in Council and assigned Bill No. 9-43, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-322 and transmitted to both Houses of Congress for its review. D.C. Law 9-197 became effective on March 16, 1993.

Expiration of Law 9-197. — Section 23(b) of D.C. Law 9-197 provided that the act shall expire 10 years from the date of its having taken effect. D.C. Law 9-197 became effective on March 16, 1993.

Severability of Law 9-197. — Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

CHAPTER 3A. HEALTH SERVICES PLANNING PROGRAM.

Sec.

32-321 to 32-339. [Repealed.]

§§ 32-321 to 32-339. Definitions; Office of Health Systems Development; establishment and functions; Health Advisory Committee; establishment and responsibilities; Health Systems Plan; development, publication, updating, and implementation; reporting, analysis and publication of utilization, financial and other health-related data; regulations, reporting periods, format and forms; certificate of need requirements; activities exempt from certificate of need review; adoption of procedures and criteria for review by the OHSD governing application and review; criteria for review and required findings; duration, modification, sale, or transfer of a certificate of need; reconsideration of review decisions; administrative appeal; judicial review of certificate of need decisions; certificate of need mandatory condition precedent; violations and penalties for noncompliance; immunity from civil liability; moratorium on applications; annual report; rules.

Repealed. Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.

Temporary repeal of chapter. — Section 803 of D.C. Law 10-253 repealed this chapter.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary establishment, on an emergency basis due to Congressional review, of a health services planning and certificate of need regulatory program in the District of Columbia, see § 2-22 of the Health Services Planning Program Congressional Review Emergency Act of 1997 (D.C. Act 12-40, March 31, 1997, 44 DCR 2070).

Section 24 of D.C. Act 12-40 provides for application of the act.

Legislative history of Law 10-253. — Law 10-253, the “Multiyear Budget Spending Reduction and Support Temporary Act of 1995,” was introduced¹ in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Signed by the Mayor on January 27, 1995, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — Law 52, the “Omnibus Budget Support Act 1995,” was introduced in Council and assigned Bill No 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995 respectively. Signed by the Mayor on July

13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Editor's notes. — Former § 32-323 was also amended by § 33 of D.C. Law 11-110.

CHAPTER 3B. HEALTH SERVICES PLANNING.

Sec.	Sec.
32-351. Definitions.	32-359. Adoption of procedures and criteria for review by the SHPDA governing application and review.
32-352. State Health Planning and Development Agency; establishment and responsibilities.	32-360. Criteria for review and required findings.
32-353. Statewide Health Coordinating Council; establishment and responsibilities.	32-361. Duration, modification, sale, or transfer of a certificate of need.
32-354. Health systems plan; development, publication, updating, and implementation.	32-362. Reconsideration of review decisions.
32-355. Reporting, analysis, and publication of utilization, financial, and other health-related data; regulations, reporting periods, format, and forms.	32-363. Administrative appeal.
32-356. Certificate of need requirements.	32-364. Judicial review of certificate of need decisions.
32-357. Activities exempt from certificate of need review.	32-365. Certificate of need mandatory condition precedent.
32-358. Activities subject to expedited administrative certificate of need reviews.	32-366. Violations and penalties for noncompliance.
	32-367. Immunity from civil liability.
	32-368. Moratorium on applications.
	32-369. Annual report.
	32-370. Fees.
	32-371. Rules.

§ 32-351. Definitions.

For the purposes of this chapter, the term:

(1) "Acquiring of effective control" means:

(A) Any transfer, assignment or other disposition of 50% or more of the stock, voting rights thereunder, ownership interest, or operating assets of a corporation or other entity which is a HCF or is the operator or owner of a HCF;

(B) Any transaction which results in any person, or any group of persons acting in concert, owning or controlling, directly or indirectly, 50% or more of the stock, voting rights thereunder, ownership interest, or operating assets of such a corporation or other entity;

(C) Any transaction which results in any person, or any group of persons acting in concert, having the ability to elect or cause the election of a majority of the board of directors of such a corporation; or

(D) Any conversion which results in the selling, transferring, leasing, exchanging, conveying, or otherwise disposing of, directly or indirectly, all the assets or a material amount of the assets, as defined by § 32-552, of a nonprofit HCF to a for-profit entity whether a corporation, mutual benefit corporation, limited liability partnership, general partnership, joint venture, or sole proprietorship, including such an entity that results from, or is created in connection with, the conversion.

(2) "Annual Implementation Plan" means the plan prepared annually by the State Health Planning and Development Agency and the Statewide Health Coordinating Council to specify actions which will achieve the goals and objectives of the Health Systems Plan.

(3) "Capital expenditure" means:

(A) Any expenditure by or on behalf of a health care facility, or by or on behalf of a person, which is, under generally accepted accounting principles,

not properly chargeable as an expense of operation or maintenance and which exceeds \$2,000,000; except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the Hospital Construction Cost Index issued by the U.S. Department of Commerce;

(B) Any acquisition under a lease or comparable arrangement, or through any other type of transfer, which would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition had been made at fair market value;

(C) Any acquisition under a lease or comparable arrangement, or through donation or through any other type of transfer by 2 or more persons acting in concert in which the aggregate cost of such acquisition would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition had been by purchase at fair market value, notwithstanding that the cost or value to each participating person of the acquisition would not, alone, otherwise constitute a capital expenditure under subparagraph (A) of this paragraph; and

(D) Any action or combination of related actions by a person or by 2 or more persons acting in concert which is taken for the purpose of acquiring, or otherwise results in the acquiring of effective control of a health care facility or any other corporation, partnership, or other entity which holds a certificate of need, and which would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition or intended acquisition had been by purchase at a fair market value.

(4) "Commissioner of Health Care Finance" means the Commissioner of Health Care Finance established by Department of Human Services Organization Order No. 216 dated September 24, 1992.

(5) "Commissioner of Mental Health" means the Commissioner of the District of Columbia Commission on Mental Health Services established by Mayor's Reorganization Plan No. 3 of 1986, effective January 3, 1987 (D.C. Code, Vol. 1), and Mayor's Order No. 88-168, effective July 13, 1988.

(6) "Commissioner of Public Health" means the Commissioner for the District of Columbia Commission of Public Health established by Reorganization Plan No. 2 of 1979, effective February 21, 1980 (D.C. Code, Vol. 1).

(7) "Director" means the director of the SHPDA established by § 32-352.

(8) "District government" means the government of the District of Columbia.

(9) "Ex parte contact" means an oral or written communication not on the official record where reasonable contemporaneous notice to all parties is not given.

(10) "Health care facility" ("HCF") means any private general hospital, psychiatric hospital, other specialty hospital, rehabilitation facility, skilled nursing facility, intermediate care facility, ambulatory care center or clinic, ambulatory surgical facility, kidney disease treatment center, freestanding hemodialysis facility, diagnostic health care facility home health agency, hospice, or other comparable health care facility which has an annual operating budget of at least \$500,000. "Health facility" shall not include Christian Science sanitariums operated, listed, and certified by the First

Church of Christ Scientist, Boston, Massachusetts; the private office facilities of a health professional, or a health care facility licensed or to be licensed as a community residence facility.

(11) "Health Maintenance Organization" ("HMO") means a private organization which is a qualifying HMO under federal regulations or has been determined to be an HMO pursuant to rules issued by the SHPDA in accordance with this chapter.

(12) "Health service" means any medical or clinical related service, including services that are diagnostic, curative or rehabilitative, as well as those related to alcohol abuse, drug abuse, mental health, home health care, hospice care, medically supervised day care, and renal dialysis. "Health service" shall not include those services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice.

(13) "Health Systems Plan" ("HSP") means the comprehensive health plan prepared by the SHPDA and the SHCC in accordance with this chapter.

(14)(A) "Major medical equipment" means equipment which is used for the provision of medical or other health services, which is acquired by or on behalf of a health care facility or by or on behalf of physicians, dentists, or other providers in individual or group practice and which has a fair market value in excess of \$1,300,000; except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the Consumer Price index issued by the Bureau of Labor Statistics, United States Department of Labor. "Major medical equipment" shall not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or a hospital and it meets the requirements of § 1861(s)(10) and (11) under the Social Security Act, approved August 14, 1935 (49 Stat. 420; 42 U.S.C. 1395x(s)), or replacement equipment exempted under § 32-357(b)(4).

(B) In determining whether medical equipment has a fair market value in excess of the amount specified in subparagraph (A) of this paragraph, the cost of studies, surveys, designs, plans, working drawings, specifications, site preparation, construction, related equipment, and other activities essential to the acquisition of the equipment shall be included.

(15) "New institutional health service" means:

(A) The construction, development, or other establishment of:

- (i) A health care facility;
- (ii) A home health or home nursing service;
- (iii) Any new health service; or

(iv) A change in the licensed bed capacity of a facility by 10 beds or 10%, whichever is less, within a 2-year period.

(B) Any health service offered by or on behalf of a HCF and which was not offered on a regular basis by the HCF within the 12-month period prior to the time the service would be offered or which involves an operating budget of at least \$600,000 in direct costs for the first year of operation, except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the medical care component of the Consumer Price Index issued by the Bureau of Labor Statistics, U.S. Department of Labor, or which results in a capital expenditure in any amount.

(16) "Person" means an individual, a trust, or estate, a partnership, or a corporation (including associations, joint stock companies, and insurance companies), the District government, or an agency, subdivision, or instrumentality of the District government.

(17) "Social Security Act" means the Social Security Act, approved August 14, 1935, as amended (49 Stat. 520; 42 U.S.C. 301 *et seq.*)

(18) "Statewide Health Coordinating Council" ("SHCC") means the Statewide Health Coordinating Council established by § 32-353 to advise the State Health Planning and Development Agency on certain health planning functions as specified in this chapter.

(19) "State Health Planning and Development Agency" ("SHPDA") means the agency for the District of Columbia within the Commission of Public Health responsible for carrying out the District government's health planning and development program established by § 32-352. (Apr. 9, 1997, D.C. Law 11-191, § 2, 43 DCR 4535; Oct. 23, 1997, D.C. Law 12-32, § 12(a)(1), 44 DCR 4819.)

Effect of amendments. — D.C. Law 12-32 added (1)(D).

Legislative history of Law 11-191. — Law 11-191, the "Health Services Planning Program," was introduced in Council and assigned Bill No. 11-086, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-347 and transmitted to both Houses of Congress for its review. D.C. Law 11-191 became effective on April 9, 1997.

Legislative history of Law 12-32. — Law 12-32, the "Healthcare Entity Conversion Act of 1997," was introduced in Council and assigned Bill No. 12-112, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 3, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-128 and transmitted to both Houses of Congress for its review. D.C. Law 12-32 became effective on October 23, 1997.

§ 32-352. State Health Planning and Development Agency; establishment and responsibilities.

(a) There is established, in the Commission on Public Health, a State Health Planning and Development Agency ("SHPDA").

(b) The SHPDA shall be responsible for health systems development in the District. The SHPDA's responsibilities for health systems development shall include:

(1) The establishment and administration of a health systems plan development and implementation program in accordance with § 32-354;

(2) The establishment of a health data and information program in accordance with § 32-355;

(3) The administration, operation, and enforcement of the certificate of need program in accordance with this chapter; and

(4) The monitoring of compliance by health care facilities with the requirements of this chapter.

(c) All regulations, rules, and procedures of the predecessor Office of Health System Development shall remain in effect until the adoption of superseding replacement of those regulations, rules and procedures. (Apr. 9, 1997, D.C. Law 11-191, § 3, 43 DCR 4535.)

Section references. — This section is referred to in § 32-351.

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-353. Statewide Health Coordinating Council; establishment and responsibilities.

(a) The SHPDA shall establish a Statewide Health Coordinating Council (“SHCC”), which shall consist of 15 members appointed by the Mayor, with the advice and consent of the Council of the District of Columbia.

(b) The SHCC shall:

- (1) Assist the SHPDA in the development of the HSP;
- (2) Review and make recommendations to the SHPDA on the HSP; and
- (3) Make recommendations to the SHPDA on an application for a certificate of need.

(c) The members appointed to the SHCC shall include:

- (1) Four consumers of health care services in the District who are not affiliated with any health care provider or facility;
- (2) Three public members;
- (3) Two representatives of incorporated associations of health care facilities in the District;
- (4) One physician representing an incorporated association of professional physicians in the District;
- (5) One nurse representing an incorporated association of professional nurses in the District;
- (6) One representative of an incorporated association of the health care insurance industry in the District;
- (7) The Commissioner of Public Health, or his or her designee;
- (8) The Commissioner of Health Care Finance, or his or her designee; and
- (9) The Commissioner of Mental Health Services, or his or her designee.

(d) Nongovernment members of the SHCC shall serve for a term of 3 years, except that of the nongovernment members initially appointed, 4 shall be appointed for a term of 3 years, 4 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of one year from the date the first members are installed. Thereafter, that date shall become the anniversary date for all appointments. Government representatives shall serve for the duration of their service in the positions stated in subsection (c)(6) and (7) of this section.

(e) A member of the SHCC may be reappointed, except that a member of the SHCC who is reappointed shall not serve more than 2 consecutive terms. A person may be reappointed to the SHCC following an absence of one year.

(f) Whenever a vacancy occurs as a result of a resignation, disability, death, more than 3 consecutive absences from regularly scheduled meetings, or for other reasons in an unexpired term on the SHCC, the Mayor shall appoint a replacement to fill that unexpired term in the same manner specified in subsections (a), (b), and (c) of this section. A member appointed to fill an unexpired term shall only serve for the remainder of that term. The completion of the unexpired term shall not constitute a full term for the purposes of subsection (e) of this section.

(g) Every 2 years, the SHCC shall elect one of its members to serve as chairman, and may elect any other officers it requires. The SHCC may adopt

rules of organization and procedure which it deems necessary and are not inconsistent with this chapter, in accordance with subchapter I of Chapter 15 of Title I.

(h) Members of the SHCC shall receive no compensation, but may be reimbursed for actual expenses incurred in the performance of official duties in accordance with § 1-612.8.

(i) The powers, duties and functions of the predecessor Health Advisory Committee established by § 32-323 ("1993 Act"), are transferred to the SHCC established by this chapter. The by-laws, regulations, and procedures of the predecessor Health Advisory Committee established by section 4 of the 1993 Act shall continue in force until new by-laws, rules, regulations, or procedures are issued by the SHCC established pursuant to this chapter. (Apr. 9, 1997, D.C. Law 11-191, § 4, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-354. Health systems plan; development, publication, updating, and implementation.

(a) The SHPDA, with the advice and recommendation of the SHCC, shall develop a proposed comprehensive HSP which shall be adopted in accordance with rules issued pursuant to § 32-371. The HSP shall:

(1) Articulate the policy of the District with respect to maintaining and improving the health of District residents and the health care delivery system in the District;

(2) Project current and future health care trends;

(3) Identify the health needs of District residents and recommend alternatives to address those health needs; and

(4) Prioritize health issues.

(b) The HSP shall serve as the basis for allocating public and private health resources in the District of Columbia.

(c) In carrying out its duties for the development of the HSP, the SHPDA shall:

(1) Provide for public involvement in and evaluation of the development and implementation of the HSP, which shall include at least one public hearing;

(2) Develop an Annual Implementation Plan ("AIP") for the implementation of the HSP;

(3) Conduct informational and educational activities concerning the HSP and the AIP; and

(4) Coordinate all health planning within the District of Columbia.

(d) Upon completion and promulgation of the final HSP, the SHPDA shall publish a notice of its completion and issuance in the District of Columbia Register and forward a copy of the final HSP to the District of Columbia Public Library.

(e) The HSP shall be reviewed annually, and amended as necessary, except that a new HSP shall be issued every 5 years. (Apr. 9, 1997, D.C. Law 11-191, § 5, 43 DCR 4535.)

Section references. — This section is referred to in § 32-352.

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-355. Reporting, analysis, and publication of utilization, financial, and other health-related data; regulations, reporting periods, format, and forms.

(a) The SHPDA shall develop and maintain the Health Planning Data System (“HPDS”). In order to implement the HPDS, the SHPDA shall require health care facilities to submit, in writing or other uniform media, data related to the utilization, management, and financing of health services including data on utilization of health services, costs of services, charges of services, and patient demographic and characteristic information, as necessary for the development of the HSP and AIP.

(b) The SHPDA shall issue rules which identify the types of data required from HCFs and establish submission schedules and formats the SHPDA may require HCFs to submit data in the absence of rules or in addition to submissions required by regulation upon the determination by the SHPDA that the data are reasonably necessary to enable the SHPDA to carry out the mission of this chapter. HCFs shall be given written notice of the data requirements. The notice shall include the basis upon which the requirements have been established.

(c) Submission of data by HCFs shall be in the form and format prescribed by the SHPDA and shall utilize forms which may be prescribed by the SHPDA.

(d) The SHPDA shall coordinate with public and private entities that collect data of the type described in this section in order to maximize the use of existing data sources and to minimize the duplication of data collection efforts.

(e) The SHPDA shall analyze data submitted and acquired and may publish data, analyses, and findings which identify major health policy issues.

(f) No application for a certificate of need shall be complete and no certificate of need shall be issued if the applicant has not submitted data as required. (Apr. 9, 1997, D.C. Law 11-191, § 6, 43 DCR 4535.)

Section references. — This section is referred to in § 32-352.

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-356. Certificate of need requirements.

(a) Except as provided in § 32-357, all persons proposing to offer or develop in the District a new institutional health service, or to obligate a capital expenditure to obtain an asset to be located in the District shall, prior to proceeding with that offering, development, or obligation, obtain from the SHPDA a certificate of need that demonstrates a public need for the new service or expenditure. Only those institutional health services or capital expenditures that are granted a certificate of need shall be offered, developed, or obligated within the District.

(b) Before there is a capital expenditure to acquire, either by purchase or under a lease or comparable arrangement, of an existing HCF or part of a HCF

("Transaction"), the person or persons acquiring control ("Proposed Owner") shall obtain a certificate of need from SHPDA. Subject to the provisions of paragraphs (5), (6), (7) and (8) of this subsection, SHPDA shall waive the procedures and review criteria set forth under § 32-359 and shall grant a certificate of need if all of the following conditions are met:

(1) The Proposed Owner shall provide written notification to SHPDA at least 60 days before the Transaction. The notification shall include the following:

(A) The names of the current owner(s) of the HCF, including, as applicable, all partners, controlling shareholders or members, directors, trustees and officers;

(B) The names of the Proposed Owner of the HCF, including, as applicable, all partners, controlling shareholders or members, directors, trustees and officers;

(C) The location(s) of the corporate office(s) of the Proposed Owner;

(D) The proposed governance structure and, if investor-owned, a description of the mechanism for ensuring community involvement in policy matters;

(E) A summary of the agreement setting forth the terms of the proposed Transaction, including the cost and means of financing the Transaction and a reasonably estimated projection of the impact of the transaction cost on charges for services to be provided;

(F) A description of any capital expenditures contemplated as a part of the Transaction;

(G) A reasonable projection of utilization and financial results for the HCF to include any expected material changes in the number of beds or services, inpatient admissions, and outpatient visits, total facility revenues, and expenses for the two-year period following the Transaction; and

(H) A reasonably estimated projection of uncompensated care (bad debt and charity) and the nature of any proposed changes to admission policies and hours of operations over the two-year period following the Transaction.

(2) The Proposed Owner shall certify in writing, as part of the notification required in subsection (b)(1) of this section, that:

(A) For the five-year period following the Transaction, the percentage of uncompensated care (charity and bad debt) provided each year to the population served by the HCF will be equal to or exceed the average of the percentage of uncompensated care provided by the HCF for the two fiscal years immediately preceding the acquisition;

(B) The Proposed Owner agrees to abide by all applicable conditions contained in certificates of need issued to the HCF, for such time and to such extent as those conditions would be applicable to the current owners in the absence of the Transaction; and

(C) All existing financial and admission policies affecting access to the HCF based upon a patient's ability to pay for services or treatment will be maintained for 2 years following transaction and will be consistent with existing law.

(3) If SHPDA determines that the notification is incomplete with respect to the information required under subsection (b)(1) and (2) of this section,

SHPDA shall have 10 days from the filing of the notification to inform the Proposed Owner that the notification is incomplete, otherwise the information shall be deemed complete on the 11th day. The Proposed Owner must file the additional information within 15 days of such notification from SHPDA, provided that the initial filing date shall be deemed the filing date of the notification for all purposes of computation of time under this section.

(4) SHPDA shall call an information hearing, which shall be completed within 50 days following the filing of the notification provided under subsection (b)(1) of this section and after the Proposed Owner files additional information pursuant to subsection (b)(3) of this section. The hearing shall include a presentation by the Proposed Owner, describing its plans and addressing the certifications provided pursuant to subsection (b)(2) of this section, and receipt of testimony from affected persons.

(5) Except as otherwise provided in this subsection, SHPDA shall issue a certificate of need for the change in effective control no later than 60 days after the date of the initial filing with SHPDA of the notification required under subsection (b)(1) of this section by the Proposed Owner unless SHPDA finds, based upon clear and convincing evidence, the following:

(A) The Proposed Owner has not filed the notification described in subsection (b)(1) and (2) of this section;

(B) The Proposed Owner has not participated in the hearing required by subsection (b)(3) of this section;

(C) The notification is not reasonably consistent with the most current state health plan adopted in final form by SHPDA after April 9, 1997, or with any annual implementation plan for such state health plan;

(D) The notification is not reasonably consistent with the record of review;

(E) In the case of an investor-owner Proposed Owner, the mechanisms for local input in policy matters are not reasonable, except that such mechanisms shall not be required to be greater than those imposed upon comparable HCFs subject to CON review;

(F) The Proposed Owner is not financially sound or does not have the financial and management capability to operate the HCF being acquired; or

(G) The acquisition costs and projected operational costs would substantially and negatively impact the Proposed Owner's ability to comply with the certifications required under subsection (b)(2) of this section.

(6) SHPDA shall notify the Proposed Owner of any deficiency in the notification or of any proposed negative finding. If, by the 60th day, the Proposed Owner has not provided the required notification or addressed SHPDA's proposed negative findings, SHPDA shall, upon request by the Proposed Owner, provide the Proposed Owner a reasonable opportunity to provide additional information to SHPDA, to participate in the required hearing, or to complete its required notice in order to cure any negative finding. SHPDA shall act upon such additional submission within 15 days. If the Proposed Owner does not respond to the SHPDA notice of deficiency within 6 months of the notification from SHPDA, SHPDA shall close the proceeding. If, following submission by the Proposed Owner, SHPDA finds by clear and

convincing evidence that any one or more of these standards is not met, SHPDA shall require that the Proposed Owner obtain a certificate of need in accordance with the provisions of § 32-359, except that the letter of intent and public hearing requirements shall be waived. If no action is taken by SHPDA within the initial prescribed 60-day time frame, the certificate of need shall be deemed to be issued and approved on the 61st day following the filing of the notification required in subsection (b)(1) of this section. If no action is taken by SHPDA within the additional 15-day time frame provided following an additional submission by the Proposed Owner under subsection (b)(5) of this section, the certificate of need shall be deemed to be issued and approved on the 16th day following the filing of the additional submission under this subsection (b)(5) of this section.

(7) In granting a certificate of need under this subsection, SHPDA shall impose no application or process requirements, apply any review criteria, or impose any conditions except as provided in subsection (b) of this section.

(8) The Office of Corporation Counsel may seek injunctive relief from a court of competent jurisdiction if it determines that a person is operating an HCF in violation of the certifications made under this subsection.

(9) The requirements of this subsection shall be effective without adoption by SHPDA of implementing regulations.

(c) Any person proposing to close permanently or to terminate operation of a HCF or health service shall notify the SHPDA of the intention to close or terminate operation no later than 90 days prior to the proposed closing, and obtains its approval, and shall provide the SHPDA with any information that may be requested as established in the rules promulgated to implement the provisions of this chapter. The information shall include, but not be limited to, the reasons for the closure or termination of operation, the number of patients to be affected by the closure, and the provisions being made to provide for their continuing care. When notice of closure of a HCF or health service is received, the SHPDA shall provide assistance for an orderly transition of the patient load to the extent possible.

(d) A conversion or acquiring of effective control, as defined in § 32-351(1), of a nonprofit HCF shall not be approved by the Corporation Counsel unless charitable assets of the HCF have been adequately protected pursuant to the provisions of the Healthcare Entity Conversion Act of 1997. (Apr. 9, 1997, D.C. Law 11-191, § 7, 43 DCR 4535; June 3, 1997, D.C. Law 12-32, § 12(a)(2), 44 DCR 4819.)

Effect of amendments. — Section 12(a)(2)(A) of D.C. Law 12-32, effective June 3, 1997, substituted “five-year period” for “two-year period” in (b)(2)(A).

Section 12(a)(2)(B) of D.C. Law 12-32, effective October 23, 1997, added (d).

Legislative history of Law 11-191. — See note to § 32-351.

Legislative history of Law 12-32. — See note to § 32-351.

References in text. — The “Healthcare

Entity Conversion Act of 1997,” referred to in (d), is D.C. Law 12-32.

Application of Law 12-32. — Section 13(b) of D.C. Law 12-32 provided that except for sections 9 and 12(a)(2)(A), this act shall not apply to a conversion substantially consummated or pending the approval of the Commissioner of Insurance and Securities or the approval of the State Health Planning and Development Agency prior to July 1, 1997.

Section 13(d) of D.C. Law 12-32 provided that

section 12(a)(2)(A) shall apply as of June 3, 1997.

§ 32-357. Activities exempt from certificate of need review.

(a) HCFs and persons proposing projects exempted from certificate of need review must file with the SHPDA a letter of notice in accordance with rules promulgated pursuant to § 32-371.

(b) The following projects are exempt from certificate of need review:

(1) The correction of cited deficiencies that are in violation of federal and District fire, building, and safety codes;

(2) The correction of deficiencies identified by private national accrediting associations and District government licensing agencies;

(3) Nonpatient care projects requiring the obligation of a capital expenditure of less than \$5 million and which will not increase patient charges by 1% or more;

(4) The acquisition of medical equipment to replace the same or similar equipment for which a certificate of need has been granted, if the replacement equipment is removed from service;

(5) The acquisition of major medical equipment to be used solely for research, new institutional health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research. This provision shall not preclude a HCF from seeking reasonable reimbursement for health care services provided under this exemption;

(6) This chapter shall not apply to any existing District of Columbia government-owned property used as a residential treatment and special education facility for not more than 24 emotionally disturbed children, ages 6 to 12 years, and as a treatment and special education facility for not more than 15 emotionally disturbed children, ages 6 to 12, who do not reside at the facility;

(7) Any proposal to offer or develop a new institutional health service or obligate a capital expenditure which would otherwise be subject to this section, if the purpose of the service or expenditure is to accommodate a resident to be transferred from D.C. Village; and

(8) The voluntary permanent reduction in the number in licensed bed capacity where a request for exemption is made 60 days before the reduction and the SHPDA finds that the reduction in bed capacity would not be inconsistent with the HSP.

(c) An HMO, or combination of HMOs, shall be exempt from certificate of need requirements if it meets the following requirements:

(1) The facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals; and

(2) At least 75% of the patients who can reasonably be expected to receive the health service will be individuals enrolled in the HMO or combination of HMOs.

(d) The District government is exempt from certificate of need requirements until January 1, 1998. (Apr. 9, 1997, D.C. Law 11-191, § 8, 43 DCR 4535.)

Section references. — This section is referred to in §§ 32-351 and 32-356.

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-358. Activities subject to expedited administrative certificate of need reviews.

(a) Proposals for major medical equipment and new institutional health services for which there is an explicit finding of need in the HSP shall be eligible for expedited administrative review without referral to the SHCC, in accordance with rules promulgated pursuant to § 32-371.

(b) Any persons proposing projects subject to expedited administrative review shall file an application with the SHPDA in accordance with rules promulgated pursuant to section 22, provided that the HSP upon which the need is assessed is no more than 3 years old. If the HSP is more than 5 years old, such proposals shall be subject to standard certificate of need review.

(c) Administrative review decisions shall initially be made the SHPDA staff and shall be appealable to the Director of the SHPDA. The decision by the Director is the final decision of the SHPDA and is subject to appeal to the Board of Appeals and review in accordance with § 32-371. (Apr. 9, 1997, D.C. Law 11-191, § 9, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-359. Adoption of procedures and criteria for review by the SHPDA governing application and review.

(a) All applications for a certificate of need shall be reviewed by the SHPDA.

(b) Existing procedures and criteria in effect on April 9, 1997, are valid insofar as they are not inconsistent with this chapter, until new rules of procedures and criteria are adopted.

(c) In accordance with § 32-371 the SHPDA shall establish, adopt, and publish procedures and criteria for the review of certificate of need applications, for new or renewal applications, or for exemptions from review. The SHPDA develop special review procedures for proposed capital expenditures not directly related to patient care but which will increase the cost of patient care by more than 1%.

(d)(1) An application for a certificate of need shall be considered complete unless the SHPDA determines, within 15 days, excluding Saturdays, Sundays, and legal holidays, after receipt of an application, that the application is not complete and requests additional information which is relevant and necessary for the application to be complete. The application shall be considered complete upon the SHPDA's receipt of the applicant's response to any such request.

(2) The SHPDA shall issue its determination on an application for a certificate of need within 90 days after the date that the application is deemed complete or is considered complete pursuant to subsection (d)(1) of this section, or, in the case of complete review, 90 days after all applications to be considered during the review period are received. If the SHPDA cannot issue its determi-

nation within that period, the review period may be extended for one additional period of 30 days.

(e) The SHPDA shall provide the applicant, the SHCC, and all previously appearing parties with a detailed explanation of any decision which contradicts the recommendation of the SHCC.

(f) The general public shall have access to all applications reviewed by the SHPDA and all other written materials essential to SHPDA's review contained in the SHPDA's files, except that the SHPDA shall establish a procedure to restrict access of the general public from portions of applications or supporting documents which contain detailed descriptions of security systems, medical record systems, controlled storage systems or proprietary financial information.

(g) In issuing a certificate of need, the SHPDA shall specify in the certificate the maximum amount of capital expenditures which may be obligated under the certificate. The SHPDA shall prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceeds the maximum specified in the certificate of need.

(h) The SHPDA may impose a condition upon the grant of a certificate of need if it is necessary to meet a criterion or standard previously adopted and published by the SHPDA. The SHPDA shall modify or remove a condition upon application at any time by the holder of the certificate of need or other person if the circumstances upon which the condition is premised change and no longer justify the condition, or if the condition, for any other reason, is no longer appropriate.

(i)(1) There shall be no ex parte contacts:

(A) In the case of an application for a certificate of need, between the applicant for a certificate of need, any person in favor of or opposed to the issuance of a certificate of need for the applicant, and any person in the SHPDA who exercises any responsibility with respect to the application after the commencement of the hearing on the applicant's application and before a decision is made with respect to the applicant; or

(B) In the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of or opposed to the withdrawal and any person in the SHPDA who exercises any responsibility with respect to the application after the commencement of the hearing on the applicant's application and before a decision is made with respect to the application.

(2) In the case where no public hearing on the application has been requested, the period of prohibition of ex parte contacts shall begin upon the adjournment of any meeting convened by the SHCC at which the application is considered. Whether or not a hearing has been held, information presented at such meeting shall not be considered ex parte contacts if the meeting chairperson affords an opportunity for rebuttal. If there is to be no hearing or public meeting, the period of prohibition of ex parte contacts shall begin upon the SHPDA's determination to conduct a type of review for which no public meeting or hearing will be held.

(j) No certificate of need holder shall begin operation of the bed, facility, or health service approved in the certificate of need until the SHPDA has conducted a review to determine compliance with the certificate of need requirements. If the SHPDA does not make a finding of noncompliance within 30 days of receiving notification from the certificate of need holder of its intent to begin operation, the SHPDA shall be deemed to have determined compliance.

(k) SHPDA shall require that all prospective certificate of need applicants certify, in writing, that for the five-year period following the award of the certificate of need the percentage of uncompensated care (charity and bad-debt) provided each year to the population served by the HCF will be equal to or exceed the average of the percentage of uncompensated care provided by the HCF for the 2 fiscal years immediately preceding the review of an application for a certificate of need pursuant to this section. (Apr. 9, 1997, D.C. Law 11-191, § 10, 43 DCR 4535; Oct. 23, 1997, D.C. Law 12-32, § 12(a)(3), 44 DCR 4819.)

Section references. — This section is referred to in § 32-356.

Effect of amendments. — D.C. Law 12-32 added (k).

Legislative history of Law 11-191. — See note to § 32-351.

Legislative history of Law 12-32. — See note to § 32-351.

§ 32-360. Criteria for review and required findings.

(a) In order to grant a certificate of need, except for a certificate of need to decrease the bed capacity of a HCF, the SHPDA shall, upon review of an applicant, make a written finding that the proposed HCF, health service, or capital expenditure meets the requirements of this chapter and any other requirements established by regulations. In addition, the SHPDA shall make the written finding that:

(1) The applicant is in compliance with all assurances made pursuant to § 603(e) of the Public Health Service Act, approved July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c *et seq.*); and

(2) The applicant, if it operates on a fee-for-service basis and has not given assurances pursuant to § 603(e) of the Public Health Service Act, approved July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c), has given equivalent assurances, in writing, to the SHPDA and is in compliance with any assurances pursuant to this subsection in a previous certificate of need application.

(b) In adopting rules in accordance with § 32-371, the SHPDA shall adopt comprehensive, detailed rules to ensure that compliance with the assurances given pursuant to subsection (a) of this section is achieved and maintained by the applicant. The SHPDA may adopt identical or separate rules for facilities described in subsection (a) of this section.

(c) In conducting certificate of need review, the SHPDA shall utilize all appropriate criteria adopted by rules.

(d) The SHCC shall, in the performance of its review functions, follow procedures and apply criteria developed and published by the SHPDA and adopted by the SHCC. (Apr. 9, 1997, D.C. Law 11-191, § 11, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-361. Duration, modification, sale, or transfer of a certificate of need.

(a) A certificate of need shall be effective for the period that the applicant states is necessary to complete the project for which the certificate of need is granted; except that no certificate of need shall be effective for more than 3 years from the original date of issuance. If the applicant is making good faith efforts to meet the schedule, the SHPDA shall extend the certificate of need for an additional period or periods as necessary for the applicant to complete the project. The SHPDA shall adopt rules to define the schedule of performance, including reporting, criteria for evaluating compliance or noncompliance with the schedule, and criteria for determining and reviewing major modifications after a certificate of need has been issued. Any review of major modifications shall be limited to the modifications and shall not affect the underlying certificate of need granted by the SHPDA.

(b) A certificate of need obtained prior to the effective date of this act shall continue to be valid for the period specified in granting the certificate of need and may be renewed in accordance with subsection (a) of this section.

(c) A current certificate of need may not be sold or transferred. The transfer of effective control over a project for which a current certificate of need has been granted shall cause the certificate of need to be subject to review and approval by the SHPDA. For the purposes of this subsection, the term “effective control” means the ability of any person, by reason of a direct or indirect ownership interest, whether of record or beneficial, in a corporation, partnership, or other entity which holds a certificate of need, to direct or cause the direction of the management or policies of that corporation, partnership or other entity, and the term “current certificate of need” means a certificate of need granted or deemed to have been granted by the SHPDA.

(d) Any transfer, assignment, or other disposition of 10% of the stock or voting rights thereunder of a corporation or other entity which is the operator of a HCF, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of the corporation which results in the ownership or control of more than 10% of the stock or voting rights thereunder of the corporation, by any person, when that corporation or entity holds a current certificate of need, shall cause the certificate of need to be subject to review and approval by the SHPDA. (Apr. 9, 1997, D.C. Law 11-191, § 12, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-362. Reconsideration of review decisions.

(a) After a decision on an application for a new or renewal certificate of need is made by the SHPDA, the SHPDA shall notify the applicant, the SHCC, all previously appearing parties, and contiguous health planning agencies of the decision. The SHPDA shall give any person, for good cause shown, an

opportunity within 30 days of the date of the notice to request reconsideration of a certificate of need decision at a public hearing before the SHPDA, which shall be held without charge. If a request demonstrates good cause, the SHPDA shall conduct a public hearing within 30 days of the request of reconsideration of the decision.

(b) For purposes of this section, the term “good cause” means:

(1) Presentation of significant and relevant information not previously considered by the SHPDA;

(2) Demonstration of a significant change in a factor or circumstance relied upon in reaching the decision;

(3) Demonstration of a material failure to follow SHPDA review procedures; or

(4) Presentation of another basis for a public hearing such as when the SHPDA determines that a hearing is in the public interest.

(c) If the SHPDA reconsiders a decision, it shall notify the persons requesting the hearing, the applicant, the SHCC, and all contiguous health planning agencies, and shall publish a notice of public hearing in at least 1 newspaper of general circulation. Any person may submit testimony at the hearing. Ex parte contact shall be prohibited after the commencement of the reconsideration hearing. A record of the hearing shall be made by the SHPDA and be available to the public upon request.

(d) Upon reconsideration, the SHPDA shall issue finding giving the basis for its decision. The SHPDA may affirm, modify, or reverse its original decision. The SHPDA shall render its final decision in writing by issuing or denying a certificate of need within 15 days following the public hearing. The final decision shall not be reconsidered. (Apr. 9, 1997, D.C. Law 11-191, § 13, 43 DCR 4535.)

Section references. — This section is referred to in § 32-363.

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-363. Administrative appeal.

(a) Following reconsideration by the SHPDA, or if the SHPDA denies a request for consideration, or has not granted a request for reconsideration pursuant to § 32-362(a) within 30 days after the request for reconsideration, the final decision of the SHPDA on the application for a certificate of need may be appealed by the SHCC, the applicant, or any previously appearing persons to the Board of Appeals and review established by Organization Order 112, dated August 11, 1955 (C.O. 55-1500) (“Board of Appeals and Review”). This appeal must be made within 30 days of the date of the SHPDA’s final decision on reconsideration issued under § 32-362(d) or, if the SHPDA does not grant a request for reconsideration, within 30 days of the date it denies a request for reconsideration.

(b) The Board of Appeals and Review shall review the record and any additional evidence presented on behalf of the parties to the appeal. It shall take due account of the presumption of official regularity, the experience, and specialized competence of the SHPDA, and the purposes of this chapter. The

Board of Appeals and Review must make its written decision within 45 days of the conclusion of its review. The decision must be provided to the applicant, the SHPDA, the person requesting the hearing, and to any other person upon request. The decision of the Board of Appeals and Review shall be considered the final decision of the SHPDA.

(c) Any contested case hearing required by § 1-1509, shall be conducted by the Board of Appeals and Review. (Apr. 9, 1997, D.C. Law 11-191, § 14, 43 DCR 4535; Mar. 24, 1998, D.C. Law 12-81, § 17, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81, in (a), deleted “D.C. Code, Title 1 Appendix” following “C.O. 55-1500.”

Legislative history of Law 11-191. — See note to § 32-351.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill

No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 32-364. Judicial review of certificate of need decisions.

Any person who contests the final decision on an application for a certificate of need, or for exemption from certificate of need review under this chapter, after the exhaustion of all administrative remedies, is entitled to judicial review thereof upon filing in the District of Columbia Court of Appeals a written petition for review pursuant to § 1-1510. (Apr. 9, 1997, D.C. Law 11-191, § 15, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-365. Certificate of need mandatory condition precedent.

The issuance of a certificate of need, if required under this chapter, shall be a condition precedent to the issuance of any license, permit, and any other type of official approval, except zoning approval, by an agency or officer or employee of the District government which is necessary for a particular health project. (Apr. 9, 1997, D.C. Law 11-191, § 16, 43 DCR 4535; Mar. 24, 1998, D.C. Law 12-81, § 18, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 substituted “if required” for “it required.”

Legislative history of Law 11-191. — See note to § 32-351.

Legislative history of Law 12-81. — See note to § 32-363.

§ 32-366. Violations and penalties for noncompliance.

(a) It shall be unlawful for any person to proceed with any project which under this chapter would require a certificate of need without applying for and obtaining a certificate of need.

(b) The Office of Corporation Counsel may seek injunctive relief from a court of competent jurisdiction when it determines that a person is offering, developing, or operating a HCF or service in violation of this chapter.

(c) Any person, including the principal officers or agents of a corporation or association, who violates this chapter, or the rules issued pursuant to this chapter, by the willful failure to obtain a certificate of need, deviates from the provisions of a certificate of need, or beginning or continuing construction or initiating a new or expanded service after expiration of a certificate of need shall, upon conviction, be subject to a fine of not less than \$500 and not more than \$2,500. Each day of a continuing violation shall constitute a separate offense.

(d) Any person, including the principal officers or agents of a corporation or association, who knowingly fails to provide, or knowingly withholds, or intentionally provides misleading information required by this chapter, or the rules issued pursuant to this chapter, upon conviction, shall be subject to a fine of not less than \$500 and not more than \$2,500, or 10 days imprisonment, or both. Each day of a continuing violation shall constitute a separate offense.

(e) The SHPDA may, following a public hearing to ascertain the facts, withdraw a current certificate of need held by any person which the SHPDA finds has violated any provision of this chapter, or the rules issued pursuant to this chapter, regardless of the initiation of any criminal prosecution, suit for injunctive relief, or imposition of civil fine, penalty, or fee.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter or any rules issued under the authority of this chapter, pursuant to §§ 6-2701 to 6-2723.

(g) The SHPDA shall, by rule, list each type of violation of this chapter which constitutes an infraction as described and shall list the fine, penalty, or fee to be imposed on a person for the first and for each subsequent violation. (Apr. 9, 1997, D.C. Law 11-191, § 17, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-367. Immunity from civil liability.

No member of the SHCC or the SHPDA may be held personally liable in any civil action taken in the course of carrying out his or her official duties and responsibilities as set forth in this chapter or the rules issued pursuant to this chapter. (Apr. 9, 1997, D.C. Law 11-191, § 18, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-368. Moratorium on applications.

The SHPDA may impose a moratorium for up to 120 days on the issuance of certificates of need for any specific type of new institutional health service, if the SHPDA requires additional time to develop and adopt criteria and standards for a new institutional health service. A moratorium may not apply

to a certificate of need application which is pending before the SHPDA at the time of the imposition of the moratorium. A particular institutional health services may not be the subject of a moratorium more than once within any 12-month period. (Apr. 9, 1997, D.C. Law 11-191, § 19, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-369. Annual report.

The SHPDA shall prepare and publish annually a report on the status of health systems development in the District, including the health plan development and implementation program, the health data and information program, and the certificate of need program. The report shall include a listing of the certificate of need reviews completed by SHPDA since the last report, a general statement of the finding and decisions made in the course of reviews, and the status of pending reviews. (Apr. 9, 1997, D.C. Law 11-191, § 20, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-370. Fees.

The SHPDA shall collect application fees from persons that request a certificate of need. The fee required for an application shall be the greater of 1% of the proposed capital expenditure or \$2,000, with a maximum of \$25,000. The SHPDA is authorized to establish a fee schedule for certain data, analyses and reports published by the SHPDA from the HPDS. (Apr. 9, 1997, D.C. Law 11-191, § 21, 43 DCR 4535.)

Legislative history of Law 11-191. — See note to § 32-351.

§ 32-371. Rules.

The SHPDA shall, in accordance with subchapter I of Chapter 15 of Title I, issue proposed rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules within the 45-day period, the proposed rules shall be deemed approved. (Apr. 9, 1997, D.C. Law 11-191, § 22, 43 DCR 4535.)

Section references. — This section is referred to in §§ 32-354, 32-357, 32-358, 32-359, and 32-360.

Legislative history of Law 11-191. — See note to § 32-351.

CHAPTER 4. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS.

Sec.

32-401. Definitions.

32-402. Expenditure of net appreciation of assets of endowment funds — Appropriations authorized.

32-403. Same — Restrictions by gift instruments; rule of construction.

32-404. Investments authorized for institutional funds.

Sec.

32-405. Delegation of investment authority.

32-406. Standard of care for administration of certain powers.

32-407. Release of restrictions on funds.

32-408. Severability.

32-409. Construction of chapter.

§ 32-401. Definitions.

In this chapter:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include:

(A) A fund held for an institution by a trustee that is not an institution; or

(B) A fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of: (A) an endowment fund at the time it became an endowment fund; (B) each subsequent donation to the fund at the time it is made; and (C) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund. (1973 Ed., § 32-1201; Apr. 6, 1977, D.C. Law 1-103, § 2, 23 DCR 8733.)

Legislative history of Law 1-103. — Law 1-103 was introduced in Council and assigned Bill No. 1-139, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings

on September 15, 1976, and October 12, 1976, respectively. Signed by the Mayor on November 9, 1976, it was assigned Act No. 1-172 and transmitted to both Houses of Congress for its review.

§ 32-402. Expenditure of net appreciation of assets of endowment funds — Appropriations authorized.

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by § 32-406. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution. (1973 Ed., § 32-1202; Apr. 6, 1977, D.C. Law 1-103, § 3, 23 DCR 8733.)

Section references. — This section is referred to in § 32-403.

Legislative history of Law 1-103. — See note to § 32-401.

§ 32-403. Same — Restrictions by gift instruments; rule of construction.

Section 32-402 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after April 6, 1977. (1973 Ed., § 32-1203; Apr. 6, 1977, D.C. Law 1-103, § 4, 23 DCR 8733.)

Legislative history of Law 1-103. — See note to § 32-401.

§ 32-404. Investments authorized for institutional funds.

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments a fiduciary may make, may:

(1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interest in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board. (1973 Ed., § 32-1204; Apr. 6, 1977, D.C. Law 1-103, § 5, 23 DCR 8733.)

Legislative history of Law 1-103. — See note to § 32-401.

§ 32-405. Delegation of investment authority.

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) Delegate to its committees, officers or employees of the institutions, or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) Contract with independent investment advisers, and investment counsel or managers, banks, or trust companies, so to act; and

(3) Authorize the payment of compensation for investment advisory or management services. (1973 Ed., § 32-1205; Apr. 6, 1977, D.C. Law 1-103, § 6, 23 DCR 8733.)

Legislative history of Law 1-103. — See note to § 32-401.

§ 32-406. Standard of care for administration of certain powers.

In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions. (1973 Ed., § 32-1206; Apr. 6, 1977, D.C. Law 1-103, § 7, 23 DCR 8733.)

Section references. — This section is referred to in § 32-402.

Legislative history of Law 1-103. — See note to § 32-401.

§ 32-407. Release of restrictions on funds.

(a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply, in the name of the institution, to the Superior Court of the District of Columbia for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The Corporation Counsel of the District of Columbia shall be notified of the application and shall be given an opportunity to be heard. The Attorney General of the United States shall be notified of the application and shall be given an opportunity to be heard when a federal interest in the application or the institution is asserted. If the Court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of cy pres. (1973 Ed., § 32-1207; Apr. 6, 1977, D.C. Law 1-103, § 8, 23 DCR 8733.)

Legislative history of Law 1-103. — See note to § 32-401.

§ 32-408. Severability.

If any provision of this chapter, or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable. (1973 Ed., § 32-1208; Apr. 6, 1977, D.C. Law 1-103, § 9, 23 DCR 8733.)

Legislative history of Law 1-103. — See note to § 32-401.

§ 32-409. Construction of chapter.

This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it. (1973 Ed., § 32-1209; Apr. 6, 1977, D.C. Law 1-103, § 10, 23 DCR 8733.)

Legislative history of Law 1-103. — See note to § 32-401.

CHAPTER 5. MEDICAL RECORDS.

Sec.

32-501. Definitions.

32-502. Authority to transmit data or information.

32-503. Liability for peer review actions or recommendations.

Sec.

32-504. Confidentiality of identity in publications.

32-505. Use of peer review reports, records, or statements in judicial and administrative proceedings.

§ 32-501. Definitions.

For the purposes of this chapter, the term:

(1) "Group practice" means a collection of health professionals that provides health-care services.

(2) "Health-care facility or agency" means a facility, agency, or other organizational entity as defined in § 32-1301.

(3) "Health professional" means a person required to be licensed or permitted to provide health-care services in the District of Columbia under Chapter 33 of Title 2.

(4) "Health professional association" means a membership organization of health professionals in the District of Columbia having as a purpose the maintenance of high professional standards within the profession practiced by its members.

(5) "Peer review" means the procedure by which health-care facilities and agencies, group practices, and health professional associations monitor, evaluate, and take actions to improve the delivery, quality, and efficiency of services within their respective facilities, agencies, and professions, including recommendations, consideration of recommendations, actions with regard thereto, and implementation of the actions. The term "peer review" includes, but is not limited to, the following:

(A) Matters affecting membership of a health professional on the staff of a health-care facility or agency;

(B) The grant, delineation, renewal, denial, modification, limitation, or suspension of clinical privileges to provide health-care services at a health-care facility or agency;

(C) Matters affecting employment and the terms of employment of a health professional by a health-care facility, agency, or group practice;

(D) Matters affecting membership and terms of membership in a health professional association, including decisions to suspend membership privileges, expel from membership, reprimand or censure a member, or other disciplinary actions;

(E) Review of the qualifications, activities, conduct, or performance of any health professional, including a grievance against a health professional;

(F) Review of the quality, efficiency, or utilization of services provided by a health professional, a health-care facility, agency, or group practice; and

(G) Review of a health professional's ability to perform, including allegations of mental or physical impairment, and imposition of programs of education, treatment, or rehabilitation, including monitoring and supervision, or conduct of programs of education.

(6) "Peer review body" means a committee, board, hearing panel or officer, reviewing panel or officer or governing board of a health-care facility or agency, group practice or health professional association that engages in peer review, the health-care facility, agency, group practice or health professional association which establishes or authorizes or is governed by it, and a director, officer, employee, or member of such an entity.

(7) "Primary health record" means the record of continuing care maintained by a health professional, group practice, or health-care facility or agency containing all diagnostic and therapeutic services rendered to an individual patient by that health professional, facility, or agency. (1973 Ed., § 32-361; Sept. 29, 1978, D.C. Law 2-112, § 2, 25 DCR 1471; Mar. 17, 1993, D.C. Law 9-234, § 2(a), 40 DCR 605.)

Effect of amendments. — D.C. Law 9-234 rewrote this section.

Legislative history of Law 2-112. — Law 2-112 was introduced in Council and assigned Bill No. 2-233, which was referred to the Committee on the Judiciary with comments from the Committee on Human Resources and the Aging. The Bill was adopted on first, amended first, and second readings on May 30, 1978, June 13, 1978, and June 27, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-236 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-234. — Law 9-234 was introduced in Council and assigned Bill No. 9-355, which was referred to the Committee on the Judiciary and reassigned to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second

readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-365 and transmitted to both Houses of Congress for its review. D.C. Law 9-234 became effective on March 17, 1993.

"Primary health record." — Summary accompanying peer review report was not "primary health record" because its information is not part of a "record of continuing care" under subsection (7). *Jackson v. Scott*, App. D.C., 667 A.2d 1365 (1995).

Cited in *Harrison v. Greater S.E. Community Hosp.*, 118 WLR 293 (Super. Ct. 1990); *Jackson v. Scott*, 118 WLR 1293 (Super. Ct. 1990); *Jackson v. Scott*, 118 WLR 1969 (Super. Ct. 1990); *Scott v. Jackson*, App. D.C., 596 A.2d 523 (1991).

§ 32-502. Authority to transmit data or information.

No person, health-care facility or agency, health professional association, or group practice providing any report, note, record, or other data or information, including advice, opinion, or testimony, to a peer review body shall be liable to any other person for damages or equitable relief by reason of providing such a report, note, record, or other data or information, unless the information provided was false and the person or entity providing the information knew the information was false. (1973 Ed., § 32-362; Sept. 29, 1978, D.C. Law 2-112, § 3, 25 DCR 1471; Mar. 17, 1993, D.C. Law 9-234, § 2(b), 40 DCR 605.)

Section references. — This section is referred to in § 32-505.

Legislative history of Law 2-112. — See note to § 32-501.

Legislative history of Law 9-234. — See note to § 32-501.

§ 32-503. Liability for peer review actions or recommendations.

No peer review body or member thereof, or person acting as its staff, or who participates with or assists such a body or member, operating in the District of

Columbia shall be liable to any person for damages or equitable relief by reason of conducting or taking peer review if the peer review was within the scope of the functions of the peer review body and if the peer review body or the member acted in the reasonable belief that the peer review was warranted by the facts known after reasonable effort to obtain the facts of the matter. (1973 Ed., § 32-363; Sept. 29, 1978, D.C. Law 2-112, § 4, 25 DCR 1471; Mar. 17, 1993, D.C. Law 9-234, § 2(c), 40 DCR 605.)

Legislative history of Law 2-112. — See note to § 32-501.

Legislative history of Law 9-234. — See note to § 32-501.

Nontreating physicians not liable for actions taken in the course of investigating competence of another physician. — In certain circumstances nontreating physicians

called upon to investigate the competence of their professional colleagues cannot be compelled to disclose their analyses and reports to third parties absent a showing of “extraordinary necessity”, and are immune from liability for actions taken in the course of their investigation. *Jackson v. Scott*, 118 WLR 1293 (Super. Ct. 1990).

§ 32-504. Confidentiality of identity in publications.

Any publication by any medical utilization review committee, peer review committee, medical staff committee or tissue review committee shall keep confidential the identity of any patient whose condition, care or treatment was a part thereof. (1973 Ed., § 32-364; Sept. 29, 1978, D.C. Law 2-112, § 5, 25 DCR 1471.)

Legislative history of Law 2-112. — See note to § 32-501.

§ 32-505. Use of peer review reports, records, or statements in judicial and administrative proceedings.

(a) Except as otherwise provided by this section:

(1) The files, records, findings, opinions, recommendations, evaluations, and reports of a peer review body, information provided to or obtained by a peer review body, the identity of persons providing information to a peer review body, and reports or information provided pursuant to § 32-502 or federal or other District of Columbia law shall be confidential and shall be neither discoverable nor admissible into evidence in any civil, criminal, legislative, or administrative proceeding. Nothing in this paragraph shall preclude use of reports or information provided under § 32-502 or federal or other District of Columbia law by a board regulating a health profession or the Mayor in proceedings by the board or the Mayor.

(2) No person who participated in the proceedings of or provided information to a peer review body shall be compelled to testify or give discovery in any civil, criminal, legislative, or administrative proceeding relating to any matter presented or discussed at those proceedings, or any information provided to or obtained by any reports, records, opinion, evaluation, finding, or recommendation of the body or its members.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, a court may order a peer review body to provide information in a criminal proceeding in

which a health professional is accused of a felony, if the court determines that disclosure is essential to protect the public interest and that the information being sought can be obtained from no other source. In determining whether disclosure is essential to protect the public interest, the court shall consider the seriousness of the offense with which the health professional is charged, the need for disclosure of the party seeking it, and the probative value of the information. If the court orders disclosure, the identity of any patient shall not be disclosed without the consent of the patient or his legal representative, and the information disclosed shall not be used except in the criminal proceeding.

(b) Notwithstanding subsection (a) of this section, primary health records and other information, documents, or records available from original sources shall not be deemed nondiscoverable or inadmissible merely because they are a part of the files, records, or reports of a peer review body.

(c) This section shall not affect the right of any health professional to discover or to have admitted into evidence the minutes and reports of a peer review body concerning the health professional for the limited purpose of adjudicating the appropriateness of an adverse action affecting the employment, membership, privileges, or association of the health professional by the peer review body. (1973 Ed., § 32-365; Sept. 29, 1978, D.C. Law 2-112, § 6, 25 DCR 1471; Mar. 17, 1993, D.C. Law 9-234, § 2(d), 40 DCR 605.)

Legislative history of Law 2-112. — See note to § 32-501.

Legislative history of Law 9-234. — See note to § 32-501.

Disclosure of investigative reports cannot be compelled absent extraordinary necessity. — In certain circumstances, nontreating physicians called upon to investigate the competence of their professional colleagues cannot be compelled to disclose their analyses and reports to third parties absent a showing of “extraordinary necessity”, and are immune from liability for actions taken in the course of their investigation. *Jackson v. Scott*, 118 WLR 1293 (Super. Ct. 1990).

Disclosure of peer review report. — The broad statutory privilege against divulgence of medical peer review reports and related information in civil judicial proceedings barred the admission of the findings and factual informa-

tion attached to a peer review report. *Jackson v. Scott*, App. D.C., 667 A.2d 1365 (1995).

Extraordinary necessity for record disclosure demonstrated. — Plaintiffs made the showing of extraordinary necessity required by subsection (a) to overcome the privilege accorded the records of a peer review committee, and thus the court properly ordered the records disclosed. *Jackson v. Scott*, 118 WLR 1969 (Super. Ct. 1990).

Discovery order. — Discovery order requiring discovery of information under the “extraordinary necessity” exception was not appealable under the exception to final order rule. *Scott v. Jackson*, App. D.C., 596 A.2d 523 (1991).

Cited in *Plough, Inc. v. National Academy of Sciences*, App. D.C., 530 A.2d 1152 (1987); *Harrison v. Greater S.E. Community Hosp.*, 118 WLR 293 (Super. Ct. 1990).

CHAPTER 5A. HEALTHCARE ENTITY CONVERSION.

Sec.

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§ 32-551. Findings.

The Council finds and declares the following:

(1) Charitable healthcare entities hold all their assets in trust, and those assets are irrevocably dedicated, as a condition of their tax-exempt status, to the specific charitable purposes set forth in the articles of incorporation of the entities.

(2) The public is the beneficiary of that trust.

(3) Healthcare entities have a substantial and beneficial effect on the quality of life of the people of the District of Columbia, providing as part of their charitable mission a large list of services to low-income families and the poor, elderly, and disabled.

(4) Transfers of the assets of healthcare entities, such as by sale, joint venture, or other sharing of assets, to for-profit entities directly affect the charitable uses of those assets and may adversely affect the public as the beneficiary of the charitable assets.

(5) The Corporation Counsel is entrusted by common law to bring actions on behalf of the public in the event of a breach of the charitable trust of a healthcare entity and to represent the public in the sale or other transfer of the assets of a healthcare entity.

(6) It is in the best interest of the public to ensure that the public interest is fully protected whenever the assets or operations of a healthcare entity are transferred, directly or indirectly, from a charitable trust to a for-profit or mutual benefit entity.

(7) The approval by the Corporation Counsel of any transfer of assets or operations is necessary to ensure the protection of these trusts. (Oct. 23, 1997, D.C. Law 12-32, § 2, 44 DCR 4819.)

Cross references. — As to examinations, see § 35-4702.

As to exclusivity of provisions, see § 35-4702.

Legislative history of Law 12-32. — Law 12-32, the "Healthcare Entity Conversion Act of 1997," was introduced in Council and assigned Bill No. 12-112, which was referred to the Committee on . The Bill was adopted on first and second readings on June 3, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-128

and transmitted to both Houses of Congress for its review. D.C. Law 12-32 became effective on October 23, 1997.

Application of Law 12-32. — Section 13(b) of D.C. Law 12-32 provided that except for sections 9 and 12(a)(2)(A), this act shall not apply to a conversion substantially consummated or pending the approval of the Commissioner of Insurance and Securities or the approval of the State Health Planning and Development Agency prior to July 1, 1997.

§ 32-552. Definitions.

For the purposes of this chapter, the term:

(1) “Applicant” means a healthcare entity or a for-profit entity that applies to the State Health Planning and Development Agency or the Commissioner of Insurance and Securities for approval of a conversion.

(2) “Authorized person” means a person who (A) controls, is controlled by, or is under common control with, a for-profit entity, directly or indirectly, through one or more intermediaries, (B) has entered into an agreement or contract, including a nonbinding letter of intent to acquire, or be acquired, through merger or other consolidation with a healthcare entity, or (C) a person who is an officer, director, agent, or managing employee of such an entity.

(3) “Conversion” means any agreement or transaction by a healthcare entity to sell, transfer, lease, exchange, option, convey, or otherwise dispose of, directly or indirectly, all of its assets, or a material amount of its assets, or control, responsibility, or governance of its assets, to a for-profit entity, including one that results from or is created in connection with the transaction or agreement.

(4) “Corporation Counsel” means the Corporation Counsel of the District of Columbia.

(5) “For-profit entity” means any corporation, mutual benefit corporation, trust, estate, partnership, limited liability company, or other entities (including associations, joint stock companies, and insurance companies) that is organized and operated for profit; or any incorporated or unincorporated division, subdivision, branch, unit, or part of such an entity including one that results from or is created in connection with the conversion of a nonprofit healthcare entity.

(6) “Person” means an individual, partnership, association, corporation, or any other organization. (Oct. 23, 1997, D.C. Law 12-32, § 3, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

§ 32-553. Conversion approval.

(a) Notwithstanding any other provisions of the law, a healthcare entity shall not execute a conversion to a for-profit entity without the approval of the Corporation Counsel.

(b) The Corporation Counsel shall review the conversion to determine whether charitable assets are adequately protected. A conversion shall not be approved unless necessary and appropriate steps have been taken by the healthcare entity, to safeguard the value of its charitable assets.

(c) In determining whether charitable assets have been adequately protected, the Corporation Counsel shall consider the following:

(1) Whether the conversion is permitted under § 29-501 et seq., and other laws of the District of Columbia governing nonprofit persons, trusts, or charities or under Internal Revenue Service rules or policies governing the disposition of charitable assets;

(2) Whether the healthcare entity exercised due diligence in deciding to sell or transfer a material amount of assets or control of operation, in selecting the purchaser, and in negotiating the terms and conditions of the conversion;

(3) Whether the procedure used by the healthcare entity in making its decision was fair and objective, and whether appropriate independent expert assistance was used;

(4) Whether any authorized person is not in full compliance with any federal, state, or local laws or requirements in every jurisdiction where the applicant operates or is licensed to do business;

(5) Whether any authorized person has been convicted of violating any federal or state law or regulation (including, without limitation, laws or regulations relating to the delivery of health care items or health care services, reimbursement for health care services, employer/employee relations, and environmental regulation) or has been indicted, is currently being investigated, or has entered into a settlement agreement in connection with the violation of any law or regulation;

(6) Whether the for-profit entity is financially sound and has the financial and management capacity to operate the healthcare entity, a department or division thereof, or any entity resulting from the conversion;

(7) Whether the for-profit entity has disclosed all potential conflicts of interest, including, but not limited to, conflicts of interest related to board members, executives, members of the medical staff of the healthcare entity, and experts retained by the healthcare entity, or the parties to the conversion;

(8) Whether the conversion will result in the enrichment of any person;

(9) Whether the healthcare entity will receive reasonably fair value for its assets and whether the market value of those assets has not been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease;

(10) Whether charitable funds are placed at unreasonable short-term or long term risk;

(11) Whether any management contract under the conversion is for reasonably fair value;

(12) Whether the charitable assets have been placed in a charitable trust controlled independently of the for-profit entity or other parties to the conversion and used for appropriate charitable purposes consistent with the healthcare entity's purposes or operation in the affected community; and

(13) Whether a right of first refusal has been retained by the healthcare entity to permit repurchase of the assets by a successor nonprofit person if and when the for-profit entity that results from conversion is subsequently proposed for sale, conversion, or merger.

(d) The Corporation Counsel shall assess the for-profit entity the reasonable costs related to, and shall expend such amounts for, the review of the proposed conversion determined by the Corporation Counsel to be necessary or appropriate. Such reasonable costs may include further expert review of the conversion, and a process to educate the public about the conversion and to obtain public comment. (July 1, 1997, D.C. Law 12-32, § 4, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

Application of Law 12-32. — Section 13(a) of D.C. Law 12-32 provided that except as provided in subsection (b) of this section, section 4 shall apply as of July 1, 1997.

Section 13(b) of D.C. Law 12-32 provided that

except for sections 9 and 12(a)(2)(A), this act shall not apply to a conversion substantially consummated or pending the approval of the Commissioner of Insurance and Securities or the approval of the State Health Planning and Development Agency prior to July 1, 1997.

§ 32-554. Charitable trusts.

(a) If the Corporation Counsel determines, pursuant to § 32-553(12), that the charitable assets of a healthcare entity have not been placed in a charitable trust controlled independently of the for-profit entity, or other parties to the conversion, and used for appropriate charitable purposes consistent with the healthcare entity's purposes or operation in the affected community, the Corporation Counsel shall ensure that a charitable trust is established.

(b) The governance of any charitable trust established to safeguard assets subject to the provisions of this chapter shall be subject to review by the Corporation Counsel, who shall ensure the following: that the governance of the charitable trust is broadly based in the community historically served by the healthcare entity; that the participation on the board of the charitable trust be persons involved in negotiating the conversion shall be limited; that such limitations may take the form of restrictions on the number of representatives or their length of services; and that the charitable activities of the nonprofit person shall not be used to satisfy the charitable obligations of the for-profit entity. (Oct. 23, 1997, D.C. Law 12-32, § 5, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

§ 32-555. Mandatory condition precedent.

The conversion approval required by § 32-553 shall be a condition precedent to the issuance of a Certificate of Need or a Certificate of Authority, permit, license, and any other type of official approval, except zoning approval, by an agency or officer or employee of the District government which is necessary for a particular health project. (Oct. 23, 1997, D.C. Law 12-32, § 6, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

§ 32-556. Process of review.

(a) The Corporation Counsel shall approve or disapprove a conversion within 60 days of receiving a request from the applicable agency.

(b) Prior to issuing a decision, the Corporation Counsel shall publish the request in at least two newspapers of general publication and may hold a public hearing to receive public testimony. Notice of a public hearing shall be published at least 10 days prior to the hearing. The Corporation Counsel may increase the number days of review provided such request will not unnecessarily delay the applicable agency's decision. The Corporation Counsel shall

hold a public hearing if requested by any interested person. The Corporation Counsel may request or subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for the purpose of the public hearing.

(c) The Corporation Counsel shall employ the services of an independent expert to assess the value of the charitable assets. If the conversion is approved, the Corporation Counsel may issue conditions and recommendations regarding the charitable assets. The costs of the review required by this section shall be assessed against the applicant. (Oct. 23, 1997, D.C. Law 12-32, § 7, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

§ 32-557. Declaratory judgment.

A for-profit entity or healthcare entity that has participated in the review process may bring an action for declaratory judgment against the decision of the Corporation Counsel and may appeal the decision to the Superior Court according to the standards set forth in § 1-1510. (Oct. 23, 1997, D.C. Law 12-32, § 8, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

§ 32-558. Conversion fee.

If a nonprofit entity is a party to a conversion approved pursuant to § 32-553, the District shall make an assessment, to recover part of the charitable assets, equal to 10% of the amount of the real property tax the healthcare entity would have paid during the past 5 years had it not been exempt from federal income taxation under sections 501(c) or (e) of the Internal Revenue Code. Such amount shall be paid in three equal installments. (July 1, 1997, D.C. Law 12-32, § 9, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

References in text. — Section 501 of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501.

Application of Law 12-32. — Section 13(b) of D.C. Law 12-32 provided that except for sections 9 and 12(a)(2)(A), this act shall not

apply to a conversion substantially consummated or pending the approval of the Commissioner of Insurance and Securities or the approval of the State Health Planning and Development Agency prior to July 1, 1997.

Section 13(c) of D.C. Law 12-32 provided that section 9 shall apply as of July 1, 1997.

§ 32-559. Violations and penalties for noncompliance.

(a) The Corporation Counsel may seek injunctive relief if the Corporation Counsel determines that a person is offering, developing, or operating a entity in violation of this chapter.

(b) Any person, including the principal officers or agents of the for-profit entity, the healthcare entity, or any other party to a conversion subject to the provisions of this chapter, who violates any provision of this chapter by the

willful failure to obtain the approval of the Corporation Counsel required by § 32-553, or who deviates from the provision of any decision approving a conversion issued pursuant § 32-553, upon conviction, shall be subject to a fine of not less than \$2,500 and not more than \$10,000. Each day of a continuing violation shall constitute a separate offense. (Oct. 23, 1997, D.C. Law 12-32, § 10, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

Application of Law 12-32. — Section 13(b) of D.C. Law 12-32 provided that except for sections 9 and 12(a)(2)(A), this act shall not apply to a conversion substantially consummated or pending the approval of the Commis-

sioner of Insurance and Securities or the approval of the State Health Planning and Development Agency prior to July 1, 1997.

Section 13(d) of D.C. Law 12-32 provided that section 12(a)(2)(A) shall apply as of June 3, 1997.

§ 32-560. Rules.

The requirements of this chapter shall become fully operative on the effective date of this chapter without adoption by the Corporation Counsel of implementing regulations. In its discretion, the Corporation Counsel may issue emergency or proposed rules to implement the provisions of this act. The proposed rules, if issued, shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules within the 45-day period, the proposed rules shall be deemed approved. (Oct. 23, 1997, D.C. Law 12-32, § 11, 44 DCR 4819.)

Legislative history of Law 12-32. — See note to § 32-551.

CHAPTER 6. SAINT ELIZABETH'S HOSPITAL AND DISTRICT OF COLUMBIA MENTAL HEALTH SERVICES.

Subchapter I. Saint Elizabeth's Hospital.

Sec.

32-601 to 32-614. [Repealed].

Subchapter II. District of Columbia Mental Health Services.

32-621. Findings and purposes.

32-622. Definitions.

32-623. Development of plan for mental health system for the District.

Sec.

32-624. Congressional review of system implementation plan.

32-625. Transition provisions for employees of the Hospital.

32-626. Conditions of employment for former employees of the Hospital.

32-627. Property transfer.

32-628. Financing provisions.

32-629. Buy American provisions.

Subchapter I. Saint Elizabeth's Hospital.

Editor's notes. — Because of the enactment of subchapter II of this chapter by Pub. L. 98-621, the preexisting text of this chapter, to

include §§ 32-601 through 32-614, has been designated as subchapter I of this chapter.

§ 32-601. Expenses of indigent patients — Payment from District revenues.

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(u).

Effective date of § 10 of Pub. L. 98-621. —

Section 11(b) of Pub. L. 98-621 makes § 10 of that act effective on October 1, 1987.

§ 32-602. Same — Payment by Treasury Department.

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(v).

Effective date of § 10 of Pub. L. 98-621. —

Section 11(b) of Pub. L. 98-621 makes § 10 of that act effective on October 1, 1987.

§ 32-603. Payments to Superintendent to be credited to appropriations for care of patients.

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(d)(1).

Effective date of § 10 of Pub. L. 98-621. —

Section 11(b) of Pub. L. 98-621 makes § 10 of that act effective on October 1, 1987.

§ 32-604. Collections or reimbursements of charges to be credited to District.

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(w).

Effective date of § 10 of Pub. L. 98-621. —

Section 11(b) of Pub. L. 98-621 makes § 10 of that act effective on October 1, 1987.

§ 32-605. Admission of indigent insane of District.

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(a), (u).

Effective date of § 10 of Pub. L. 98-621. —
Section 11(b) of Pub. L. 98-621 makes § 10 of
that act effective on October 1, 1987.

§ 32-606. Private patients.

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(a).

Effective date of § 10 of Pub. L. 98-621. —
Section 11(b) of Pub. L. 98-621 makes § 10 of
that act effective on October 1, 1987.

§ 32-607. Patients of District and federal government.

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(d)(1).

Effective date of § 10 of Pub. L. 98-621. —
Section 11(b) of Pub. L. 98-621 makes § 10 of
that act effective on October 1, 1987.

§ 32-608. Admission of insane convicts.

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(a).

Effective date of § 10 of Pub. L. 98-621. —
Section 11(b) of Pub. L. 98-621 makes § 10 of
that act effective on October 1, 1987.

 **§§ 32-609 to 32-612. Gifts to Hospital — Authorization to
accept; custody and investment; intangible
personal property; real property or tangible
personal property.**

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(j).

Effective date of § 10 of Pub. L. 98-621. —
Section 11(b) of Pub. L. 98-621 makes § 10 of
that act effective on October 1, 1987.

 **§§ 32-613, 32-614. Superintendent authorized to prescribe
regulations; Mayor authorized to prescribe
regulations.**

Repealed. Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(x).

Effective date of § 10 of Pub. L. 98-621. —
Section 11(b) of Pub. L. 98-621 makes § 10 of
that act effective on October 1, 1987.

*Subchapter II. District of Columbia Mental Health Services.***§ 32-621. Findings and purposes.**

(a) The Congress makes the following findings:

(1) Governmentally administered mental health services in the District of Columbia are currently provided through 2 separate public entities, the federally administered Saint Elizabeths Hospital and the Mental Health Services Administration of the District of Columbia Department of Human Resources.

(2) The District of Columbia has a continuing responsibility to provide mental health services to its residents.

(3) The federal government, through its operation of a national mental health program at Saint Elizabeths Hospital, has for over 100 years assisted the District of Columbia in carrying out that responsibility.

(4) Since its establishment by Congress in 1855, Saint Elizabeths Hospital has developed into a respected national mental health hospital and study, training, and treatment center, providing a range of quality mental health and related services, including:

(A) Acute and chronic inpatient psychiatric care;

(B) Outpatient psychiatric and substance abuse clinical and related services;

(C) Federal court system forensic psychiatry referral, evaluation, and patient treatment services for prisoners, and for individuals awaiting trial or requiring post-trial or post-sentence psychiatric evaluation;

(D) Patient care and related services for designated classes of individuals entitled to mental health benefits under federal law, such as certain members and employees of the United States Armed Forces and the Foreign Service, and residents of American overseas dependencies;

(E) District of Columbia court system forensic psychiatry referral, evaluation, and patient treatment services for prisoners, and for individuals awaiting trial or requiring post-trial or post-sentence psychiatric evaluation;

(F) Programs for special populations such as the mentally ill deaf;

(G) Support for basic and applied clinical psychiatric research and related patient services conducted by the National Institute of Mental Health and other institutions; and

(H) Professional and paraprofessional training in the major mental health disciplines.

(5) The continuation of the range of services currently provided by federally administered Saint Elizabeths Hospital must be assured, as these services are integrally related to:

(A) The availability of adequate mental health services to District of Columbia residents, nonresidents who require mental health services while in the District of Columbia, individuals entitled to mental health services under federal law, and individuals referred by both federal and local court systems; and

(B) The Nation's capacity to increase our knowledge and understanding about mental illness and to facilitate and continue the development and broad

availability of sound and modern methods and approaches for the treatment of mental illness.

(6) The assumption of all or selected functions, programs, and resources of Saint Elizabeths Hospital from the federal government by the District of Columbia, and the integration of those functions, resources, and programs into a comprehensive mental health care system administered solely by the District of Columbia, will improve the efficiency and effectiveness of the services currently provided through those 2 separate entities by shifting the primary focus of care to an integrated community-based system.

(7) Such assumption of all or selected functions, programs, and resources of Saint Elizabeths Hospital by the District of Columbia would further the principle of home rule for the District of Columbia.

(b) It is the intent of Congress that:

(1) The District of Columbia have in operation no later than October 1, 1991, an integrated coordinated mental health system in the District which provides:

(A) High quality, cost-effective, and community-based programs and facilities;

(B) A continuum of inpatient and outpatient mental health care, residential treatment, and support services through an appropriate balance of public and private resources; and

(C) Assurances that patient rights and medical needs are protected;

(2) The comprehensive District mental health care system be in full compliance with the federal court consent decree in *Dixon v. Heckler*;

(3) The District and federal governments bear equitable shares of the costs of a transition from the present system to a comprehensive District mental health system;

(4) The transition to a comprehensive District mental health system provided for by this subchapter be carried out with maximum consideration for the interests of employees of the Hospital and provide a right-of-first-refusal to such employees for employment at comparable levels in positions created under the system implementation plan;

(5) The federal government have the responsibility for the retraining of Hospital employees to prepare such employees for the requirements of employment in a comprehensive District mental health system;

(6) The federal government continue high quality mental health research, training, and demonstration programs at Saint Elizabeths Hospital;

(7) The District government establish and maintain accreditation and licensing standards for all services provided in District mental health facilities which assure quality care consistent with appropriate federal regulations and comparable with standards of the Joint Commission on Accreditation of Hospitals; and

(8) The comprehensive mental health system plan include a component for direct services for the homeless mentally ill. (Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 2; Oct. 31, 1991, 105 Stat. 980, Pub. L. 102-150, § 3(a).)

Section references. — This section is referred to in §§ 32-624 and 32-627.

Effective date of subchapter. — Section 11(a) of Pub. L. 98-621 provides that this subchapter is effective on October 1, 1985.

Transitional payment authorized. — Public Law 101-518, 104 Stat. 2224, the District of Columbia Appropriations Act, 1991, provided for a federal contribution to the District of Columbia, as authorized by the Saint Elizabeth's Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (98 Stat. 3369; Public Law 98-621), \$15,000,000.

Inpatient rate and operating costs. — Section 101(d) of Pub. L. 99-591, the D.C. Appropriations Act, 1987, provided that the inpatient rate (excluding the proportionate share for repairs and construction) for services rendered by Saint Elizabeths Hospital for patient care shall be at the per diem rate established pursuant to § 2 of an Act to authorize certain expenditures from the appropriation of Saint Elizabeths Hospital, and for other purposes, approved August 4, 1947 (61 Stat. 751, Pub. L. 80-353; 24 U.S.C. § 168(a)); and provided further, that total funds paid by the District of Columbia as reimbursements for operating costs of Saint Elizabeths Hospital, including any District of Columbia payments

(but excluding the federal matching share of payments) associated with title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; Pub. L. 89-97; 42 U.S.C. § 1396 et seq.), shall not exceed \$71,200,000.

Preferred Alternative Use and Transfer of the Saint Elizabeths West Campus Emergency Resolution of 1993. — Pursuant to Resolution 10-129, effective July 21, 1993, the Council concurred, on an emergency basis, with the Mayor's recommendation of the use and proposed transfer of the West Campus of Saint Elizabeths Hospital to the District of Columbia pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act.

Delegation of Authority to Make Grants to Implement the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, Public Law 98-621. — See Mayor's Order 92-64, May 19, 1992.

Compliance with the Certificate of Need Act. — The Mental Health Services Act did not eliminate the District's obligation to comply with the Certificate of Need Act, for there is no conflict between the 2 statutes. *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

Cited in *Roberts v. District of Columbia Bd. of Medicine*, App. D.C., 577 A.2d 319 (1990); *In re Myrick*, App. D.C., 624 A.2d 1222 (1993).

§ 32-622. Definitions.

For the purpose of this subchapter:

(1) The term "Hospital" means the institution in the District of Columbia known as Saint Elizabeths Hospital operated on November 8, 1984, by the Secretary of Health and Human Services.

(2) The term "Secretary" means the Secretary of Health and Human Services.

(3) The term "Mayor" means the Mayor of the District of Columbia.

(4) The term "District" means the District of Columbia.

(5) The term "federal court consent decree" means the consent decree in *Dixon v. Heckler*, Civil Action No. 74-285.

(6) The term "service coordination period" means a period beginning on October 1, 1985, and terminating on October 1, 1987.

(7) The term "financial transition period" means a period beginning on October 1, 1985, and terminating on October 1, 1991.

(8) The term "system implementation plan" means the plan for a comprehensive mental health system for the District of Columbia to be developed pursuant to this subchapter.

(9) The term "Council" means the Council of the District of Columbia. (Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 3.)

Effective date of subchapter. — See note to § 32-621.

§ 32-623. Development of plan for mental health system for the District.

(a)(1) Subject to subsection (g) of this section and § 32-628(b)(1), effective October 1, 1987, the District shall be responsible for the provision of mental health services to residents of the District.

(2) Not later than October 1, 1993, the Mayor shall complete the implementation of the final system implementation plan reviewed by the Congress and the Council in accordance with the provisions of this subchapter for the establishment of a comprehensive District mental health system to provide mental health services and programs through community mental health facilities to individuals in the District of Columbia.

(b)(1) The Mayor shall prepare a preliminary system implementation plan for a comprehensive mental health system no later than 3 months from October 1, 1985, and a final implementation plan no later than 12 months from October 1, 1985.

(2) The Mayor shall submit the preliminary system implementation plan to the Council no later than 3 months from October 1, 1985. The Council shall review such plan and transmit written recommendations to the Mayor regarding any revisions to such plan no later than 60 days after such submission. The Mayor shall submit the revised preliminary plan to the Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate for review and comment in accordance with the provisions of this subchapter.

(3) The final system implementation plan shall be considered by the Council consistent with the provisions of § 1-242(12).

(4) After the review of the Council pursuant to paragraph (3) of this subsection, the Mayor shall submit the final implementation plan to the Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate for review and comment in accordance with the provisions of this subchapter.

(c) The system implementation plan shall:

(1) Propose and describe an integrated, comprehensive, and coordinated mental health system for the District of Columbia;

(2) Identify the types of treatment to be offered, staffing patterns, and the proposed sites for service delivery within the District of Columbia comprehensive mental health system;

(3) Identify mechanisms to attract and retain personnel of appropriate number and quality to meet the objectives of the comprehensive mental health system;

(4) Be in full compliance with the federal court consent decree in *Dixon v. Heckler* and all applicable District of Columbia statutes and court decrees;

(5) Identify those positions, programs, and functions at Saint Elizabeths Hospital which are proposed for assumption by the District, those facilities at Saint Elizabeths Hospital which are proposed for utilization by the District

under a comprehensive District mental health system, and the staffing patterns and programs at community facilities to which the assumed functions are to be integrated;

(6) Identify any capital improvements to facilities at Saint Elizabeths Hospital and elsewhere in the District of Columbia proposed for delivery of mental health services, which are necessary for the safe and cost effective delivery of mental health services; and

(7) Identify the specific real property, buildings, improvements, and personal property to be transferred pursuant to § 32-627(a)(1) needed to provide mental health and other services provided by the Department of Human Services under the final system implementation plan.

(d)(1) The Mayor shall develop the system implementation plan in close consultation with officials of Saint Elizabeths Hospital, through working groups to be established by the Secretary and the Mayor for that purpose.

(2) The Mayor and the Secretary shall establish a labor-management advisory committee, requesting the participation of federal and District employee organizations affected by this subchapter, to make recommendations on the system implementation plan. The committee shall consider staffing patterns under a comprehensive District mental health care system, retention of Hospital employees under such system, federal retraining for such employees, and any other areas of concern related to the establishment of a comprehensive District system. In developing the system implementation plan the Mayor shall carefully consider the recommendations of the committee. Such advisory committee shall not be subject to the Federal Advisory Committee Act.

(3) The Mayor and such working groups shall, in developing the plan, solicit comments from the public, which shall include professional organizations, provider agencies and individuals, and mental health advocacy groups in the District of Columbia.

(e)(1) The Mayor and the Secretary may, during the service coordination period, by mutual agreement and consistent with the requirements of the system implementation plan direct the shift of selected program responsibilities and staff resources from Saint Elizabeths Hospital to the District. The Secretary may assign staff occupying positions in affected programs to work under the supervision of the District. The Mayor shall notify the Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate in writing of any planned shift in program responsibilities or staff resources not less than 30 days prior to the implementation of such shift.

(2)(A) Except as provided in subparagraph (B) of this paragraph, after October 1, 1984, and during the service coordination period, no request for proposals may be issued by the Secretary for any areas of commercial activity at the Hospital pursuant to Office of Management and Budget circular A-76.

(B) The limitation under subparagraph (A) of this paragraph shall not apply to studies initiated pursuant to such circular prior to October 1, 1984.

(f)(1) To assist the Mayor in the development of the system implementation plan, the Secretary shall contract for a financial audit and a physical plant

audit of all existing facilities at the hospital to be completed by January 1, 1986. The financial audit shall be conducted according to generally accepted accounting principles. The physical plant audit shall recognize any relevant national and District codes and estimate the useful life of existing facility support systems.

(2)(A) Pursuant to such physical plant audit, the Secretary shall initiate not later than October 1, 1987, and, except as provided under an agreement entered into pursuant to subparagraph (C) of this paragraph, complete not later than October 1, 1993, such repairs and renovations to such physical plant and facility support systems of the hospital as are to be utilized by the District under the system implementation plan as part of a comprehensive District mental health system, as are necessary to meet any applicable code requirements or standards.

(B) At a minimum until October 1, 1987, the Secretary shall maintain all other facilities and infrastructure of the hospital not assumed by the District in the condition described in such audit.

(C) The Secretary may enter into an agreement with the Mayor under which the Secretary shall provide funds to the Mayor to complete the repairs and renovations described in subparagraph (A) of this paragraph and to make other capital improvements that are necessary for the safe and cost effective delivery of mental health services in the District, except that \$7,500,000 of the funds provided to the Mayor under such an agreement shall be used to make capital improvements to facilities not located at Saint Elizabeths Hospital. Of the \$7,500,000 provided for improvements to facilities not located at the Hospital, not less than \$5,000,000 shall be used to make capital improvements to housing facilities for seriously and chronically mentally ill individuals.

(g) During the service coordination period, the District of Columbia and the Secretary, to the extent provided in the federal court consent decree, shall be jointly responsible for providing citizens with the full range and scope of mental health services set forth in such decree and the system implementation plan. No provision of this subchapter or any action or agreement during the service coordination period may be so construed as to absolve or relieve the District or the federal government of their joint or respective responsibilities to implement fully the mandates of the federal court consent decree. (Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 4; Oct. 31, 1991, 105 Stat. 980, Pub. L. 102-150, §§ 2, 3(a).)

Section references. — This section is referred to in §§ 32-624, 32-627, and 32-628.

Effective date of subchapter. — See note to § 32-621.

References in text. — The Federal Advisory Committee Act, referred to at the end of subsection (d)(2), appears as Appendix 2 of Title 5 of the United States Code.

Council recommendations on preliminary system implementation plan. — Pursuant to Resolution 6-566, the "Preliminary System Implementation Plan for a Comprehensive District Mental Health System Recommendation Resolution of 1986," effective Febru-

ary 25, 1986, the Council expressed its recommendations regarding revisions to the preliminary system implementation plan for a comprehensive District mental health system proposed by the Mayor.

Delegation of authority under Public Law 98-621. — See Mayor's Order 85-162, September 26, 1985.

Mental Health System Reorganization Office established. — See Mayor's Order 84-196, November 1, 1984.

Compliance with the Certificate of Need Act. — The Mental Health Services Act did not eliminate the District's obligation to comply

with the Certificate of Need Act, for there is no conflict between the 2 statutes. *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

Cited in *In re Reed*, App. D.C., 571 A.2d 801 (1990).

§ 32-624. Congressional review of system implementation plan.

(a) The Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate shall review the preliminary system implementation plan transmitted by the Mayor pursuant to § 32-623 to determine the extent of its compliance with the provisions of § 32-621(b) and § 32-623, and transmit written recommendations regarding any revisions to the preliminary plan to the Mayor not later than 60 days after receipt of such plan.

(b) The Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate shall, within 90 days of submission of the final system implementation plan by the Mayor pursuant to § 32-623, review such plan to determine the extent to which it is in compliance with the provisions of § 32-621(b) and § 32-623. (Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 5.)

Effective date of subchapter. — See note to § 32-621.

Cited in *Speyer v. Barry*, App. D.C., 588 A.2d 1147 (1991).

§ 32-625. Transition provisions for employees of the Hospital.

(a) Employees of the Hospital directly affected by the assumption of programs and functions by the District government who meet the requirements for immediate retirement under the provisions of § 8336(d) of Title 5, United States Code, shall be accorded the opportunity to retire during the 30-day period prior to the assumption of such programs and functions.

(b)(1) The system implementation plan shall prescribe the specific number and types of positions needed by the District government at the end of the service coordination period.

(2) Notwithstanding § 3503 of Title 5, United States Code, employees of the hospital shall only be transferred to District employment under the provisions of this section.

(c)(1) While on the retention list or the District or federal agency reemployment priority list, the system implementation plan shall provide to Hospital employees a right-of-first-refusal to District employment in positions for which such employees may qualify, (A) created under the system implementation plan in the comprehensive District mental health system, (B) available under the Department of Human Services of the District, and (C) available at the District of Columbia General Hospital.

(2) In accordance with federal regulations, the Secretary shall establish retention registers of hospital employees and provide such retention registers

to the District government. Employment in positions identified in the system implementation plan under subsection (b) of this section shall be offered to hospital employees by the District government according to each such employee's relative standing on the retention registers.

(3) Employee appeals concerning the retention registers established by the Secretary shall be in accordance with federal regulations.

(4) Employee appeals concerning employment offers by the District shall be in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(d)(1) Notwithstanding any other provision of law, employees of the Hospital, while on the federal agency reemployment priority list, shall have a right-of-first-refusal to employment in comparable available positions for which they qualify within the Department of Health and Human Services in the Washington metropolitan area.

(2) If necessary to separate employees of the hospital from federal employment, such employees may be separated only under federal reduction-in-force procedures.

(3) A federal agency reemployment priority list and a displaced employees program shall be maintained for employees of the hospital by the Secretary and the Office of Personnel Management in accordance with federal regulations for federal employees separated by reduction-in-force procedures.

(4) The Mayor shall create and maintain, in consultation with the Secretary, a District agency reemployment priority list of those employees of the Hospital on the retention registers who are not offered employment under subsection (c) of this section. Individuals who refuse an offer of employment under subsection (c) of this section shall be ineligible for inclusion on the District agency reemployment priority list. Such reemployment priority list shall be administered in accordance with procedures established pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(5) Acceptance of nontemporary employment as a result of referral from any retention list or agency reemployment priority list shall automatically terminate an individual's severance pay as of the effective date of such employment.

(e) Any contract entered into by the District of Columbia for the provision of mental health services formerly provided by or at the hospital shall require the contractor or provider, in filling new positions created to perform under the contract, to give preference to qualified candidates on the District agency reemployment priority list created pursuant to subsection (d) of this section. An individual who is offered nontemporary employment with a contractor shall have his or her name remain on the District agency reemployment priority list under subsection (d) of this section for not more than 24 months from the date of acceptance of such employment. (Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 6.)

Section references. — This section is referred to in § 32-626.

Effective date of subchapter. — See note to § 32-621.

References in text. — The District of Columbia Government Comprehensive Merit Personnel Act of 1978, referred to in subsection (c)(4), is D.C. Law 2-139.

§ 32-626. Conditions of employment for former employees of the Hospital.

(a) Each individual accepting employment without a break in service with the District government pursuant to § 32-625 shall:

(1) Except as specifically provided in this subchapter, be required to meet all District qualifications other than licensure requirements for appointment required of other candidates, and shall become District employees in the comparable District service subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, and all other statutes and regulations governing District personnel;

(2) Meet all licensure requirements within 27 months of appointment by the District government or shall be issued a limited license subject to the provisions, limitations, conditions, or restrictions that shall be determined by the appropriate board or commission. The limited license shall not exceed the term of employment with the Commission on Mental Health Services;

(3) Notwithstanding Chapter 63 of Title 5, United States Code, transfer accrued annual and sick leave balances pursuant to Title XII of the District of Columbia Comprehensive Merit Personnel Act of 1978;

(4) Have the grade and rate of pay determined in accordance with regulations established pursuant to Title XI of the District of Columbia Comprehensive Merit Personnel Act of 1978, except that no employee shall suffer a loss in the basic rate of pay or in seniority;

(5) If applicable, retain a rate of pay including the physician's comparability allowance under the provisions of § 5948 of Title 5, United States Code, and continue to receive such allowance under the terms of the then prevailing agreement until its expiration or for a period of 2 years from the date of appointment by the District government, whichever occurs later;

(6) Be entitled to the same health and life insurance benefits as are available to District employees in the applicable service;

(7) If employed by the federal government before January 1, 1984, continue to be covered by the United States Civil Service Retirement System, under Chapter 83 of Title 5, United States Code, to the same extent that such retirement system covers District government employees; and

(8) If employed by the federal government on or after January 1, 1984, be subject to the retirement system applicable to District government employees pursuant to Title XXVI, Retirement, of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(b) An individual appointed to a position in the District government without a break in service, from the retention list, or from the District or federal agency reemployment priority lists, shall be exempt from the residency requirements of Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(c) An individual receiving compensation for work injuries pursuant to Chapter 81 of Title 5, United States Code, shall:

(1) Continue to have the claims adjudicated and the related costs paid by the federal government until such individual recovers and returns to duty;

(2) If medically recovered and returned to duty, have any subsequent claim for the recurrence of the disability determined and paid under the provisions of Title XXIII of the District of Columbia Comprehensive Merit Personnel Act of 1978.

(d) The District government may initiate or continue an action against an individual who accepts employment under § 32-625(c) for cause related to events that occur prior to the end of the service coordination period. Any such action shall be conducted in accordance with such federal laws and regulations under which action would have been conducted had the assumption of function by the District not occurred.

(e) Commissioned public health service officers detailed to the District of Columbia mental health system shall not be considered employees for purposes of any full-time employee equivalency total of the Department of Health and Human Services.

(f) For purposes of this section, Hospital employees shall include former patient employees occupying career positions at the Hospital. (Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 7; June 8, 1989, D.C. Law 8-7, § 2, 36 DCR 2847; Oct. 18, 1989, D.C. Law 8-40, § 2, 36 DCR 5756.)

Legislative history of Law 8-7. — Law 8-7 was introduced in Council and assigned Bill No. 8-223. The Bill was adopted on first and second readings on March 21, 1989 and April 4, 1989, respectively. Signed by the Mayor on April 17, 1989, it was assigned Act No. 8-23 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-40. — Law 8-40 was introduced in Council and assigned Bill No. 8-104, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June

27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned Act No. 8-69 and transmitted to both Houses of Congress for its review.

Effective date of subchapter. — See note to § 32-621.

References in text. — The District of Columbia Government Comprehensive Merit Personnel Act of 1978, referred to throughout this section, is D.C. Law 2-139.

Cited in *Roberts v. District of Columbia Bd. of Medicine*, App. D.C., 577 A.2d 319 (1990).

§ 32-627. Property transfer.

(a)(1) Except as provided in paragraph (2) of this subsection, on October 1, 1987, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States in all real property at Saint Elizabeths Hospital in the District of Columbia together with any buildings, improvements, and personal property used in connection with such property needed to provide mental health and other services provided by the Department of Human Services identified pursuant to § 32-623(c)(7).

(2) Such real property as is identified by the Secretary by September 30, 1987, as necessary to federal mental health programs at Saint Elizabeths Hospital under § 32-621(b)(6) shall not be transferred under this subsection.

(b) On or before October 1, 1992, the Mayor shall prepare, and submit to the Committee on the District of Columbia of the House of Representatives and the Committees on Governmental Affairs and Labor and Human Resources of the Senate, a master plan, not inconsistent with the comprehensive plan for the

National Capital, for the use of all real property, buildings, improvements, and personal property comprising Saint Elizabeths Hospital in the District of Columbia not transferred or excluded pursuant to subsection (a) of this section. In developing such plan, the Mayor shall consult with, and provide an opportunity for review by, appropriate federal, regional, and local agencies. Such master plan submitted by the Mayor shall be approved by a law enacted by the Congress within the 2-year period following the date such plan is submitted to the Committee on the District of Columbia of the House of Representatives and the Committees on Governmental Affairs and Labor and Human Resources of the Senate. Immediately upon the approval of any such law, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States in and to such property in accordance with such approved plan. The real property, together with the buildings and other improvements thereon, including personal property used in connection therewith, known as the Oxon Cove Park and operated by the National Park Service, Department of the Interior, shall not be transferred under this chapter.

(c) On October 1, 1985, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States to lot 87, square 622, in the subdivision made by the District of Columbia Redevelopment Land Agency, as per plat recorded in the Office of the Surveyor for the District of Columbia, in liber 154 at folio 149 (901 First Street N.W., the J.B. Johnson Building and grounds). (Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 8; Oct. 31, 1991, 105 Stat. 980, Pub. L. 102-150, § 3(b).)

Section references. — This section is referred to in §§ 5-1401 and 32-623.

Effective date of subchapter. — See note to § 32-621.

Editor's notes. — The reference to subsection "(b)(6)" of § 32-622 in paragraph (2) of subsection (a) of this section erroneously appeared as "(b)(5)" in § 8 of Public Law 98-621.

§ 32-628. Financing provisions.

(a) There are authorized to be appropriated for grants by the Secretary of Health and Human Services to the District of Columbia comprehensive mental health system, \$30,000,000 for fiscal year 1988, \$24,000,000 for fiscal year 1989, \$18,000,000 for fiscal year 1990, and \$12,000,000 for fiscal year 1991.

(b)(1) Beginning on October 1, 1987, and in each subsequent fiscal year, the appropriate federal agency is directed to pay the District of Columbia the full costs for the provision of mental health diagnostic and treatment services for the following types of patients:

(A) Any individual referred to the system pursuant to a federal statute or by a responsible federal agency;

(B) Any individual referred to the system for emergency detention or involuntary commitment after being taken into custody:

(i) As a direct result of the individual's action or threat of action against a federal official;

(ii) As a direct result of the individual's action or threat of action on the grounds of the White House or of the Capitol; or

(iii) Under Chapter 9 of Title 21 of the District of Columbia Code;

(C) Any individual referred to the system as a result of a criminal proceeding in a federal court (including an individual admitted for treatment, observation, and diagnosis and an individual found incompetent to stand trial or found not guilty by reason of insanity). The preceding provisions of this paragraph apply to any individual referred to the system (or to Saint Elizabeths Hospital) before or after November 8, 1984.

(2) The responsibility of the United States for the cost of services for individuals described in paragraph (1) of this subsection shall not affect the treatment responsibilities to the District of Columbia under the Interstate Compact on Mental Health.

(c) During the service coordination and the financial transition periods, the District of Columbia shall gradually assume a greater share of the financial responsibility for the provision of mental health services provided by the system to individuals not described in subsection (b) of this section.

(d) Subject to § 32-623(f)(2), capital improvements to facilities at Saint Elizabeths Hospital authorized during the service coordination period shall be the shared responsibility of the District and the federal government in accordance with Public Law 83-472.

(e) Pursuant to the financial audit under § 32-623(f), any unassigned liabilities of the Hospital shall be assumed by and shall be the sole responsibility of the federal government.

(f)(1) After the service coordination period, the Secretary shall conduct an audit, under generally accepted accounting procedures, to identify the liability of the federal government for accrued annual leave balances for those employees assumed by the District under the system implementation plan.

(2) There is authorized to be appropriated for payment by the federal government to the District an amount equal to the liability identified by such audit.

(g) Nothing in this subchapter shall affect the authority of the District of Columbia under any other statute to collect costs billed by the District of Columbia for mental health services, except that payment for the same costs may not be collected from more than one party.

(h) The government of the United States shall be solely responsible for:

(1) All claims and causes of action against Saint Elizabeths Hospital that accrue before October 1, 1987, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United States shall, in the case of any tort claim, only be responsible for any such claim against the United States that accrues before October 1, 1987, and the United States shall not compromise or settle any claim resulting in District liability without the consent of the District, which consent shall not be unreasonably withheld; and

(2) All claims that result in a judgment or award against Saint Elizabeths Hospital before October 1, 1987. (Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 9(a)-(c)(1), (d)-(h).)

Section references. — This section is referred to in § 32-623.

Effective date of subchapter. — See note to § 32-621.

Cited in *In re Myrick*, App. D.C., 624 A.2d 1222 (1993).

§ 32-629. Buy American provisions.

(a) *Generally.* — The Mayor shall insure that the requirements of the Buy American Act of 1933, as amended, apply to all procurements made under this subchapter.

(b) *Determination by the Mayor.* — (1) If the Mayor, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) of this subsection has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the United States Trade Representative shall rescind the waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) of this subsection is any agreement, between the United States and a foreign country pursuant to which the head of an agency of the United States Government has waived the requirements of the Buy American Act with respect to certain products produced in the foreign country.

(c) *Report to Congress.* — The Mayor shall submit to Congress a report on the amount of purchases from foreign entities under this subchapter from foreign entities in fiscal years 1992 and 1993. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (b)(2) of this section, the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(d) *Buy American Act defined.* — For purposes of this section, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).

(e) *Restrictions on contract awards.* — No contract or subcontract made with funds authorized under this title may be awarded for the procurement of an article, material, or supply produced or manufactured in a foreign country whose government unfairly maintains in government procurement a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to (g)(1)(A) of section 305 of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)). Any such determination shall be made in accordance with section 305 [of such act].

(f) *Prohibition against fraudulent use of “Made in America” labels.* — If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract under this subchapter,

pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations. (Oct. 31, 1991, 105 Stat. 980, Pub. L. 102-150, § 4.)

Effect of amendments. — Section 4 of Pub. L. 102-150, 105 Stat. 981, the District of Columbia Mental Health Program Assistance Act of 1991, added this section.

CHAPTER 7. INDUSTRIAL HOME SCHOOL.

Sec.

32-701. Control and management.

32-702. Powers and duties of Department of Human Services.

32-703. Exchange; sale and use of School site;

Sec.

acquisition of new site and buildings.

32-704. Disposition of moneys from Industrial Home School.

§ 32-701. Control and management.

The Department of Human Services shall have complete and exclusive control and management of the Industrial Home School. All supplies for said School shall be obtained by requisition upon the Mayor of the District of Columbia and all moneys received at said School as income thereof from sale of products and from payments for board and instruction, or otherwise, shall be paid over to said Mayor to be expended by him for the support of the School. (June 11, 1896, 29 Stat. 410, ch. 419; Feb. 28, 1923, 42 Stat. 1361, ch. 148, § 1; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6; 1973 Ed., § 32-501.)

Cross references. — As to powers and duties of Board of Public Welfare, see § 3-101 et seq.

As to appointment of Superintendent of Industrial Home School, see § 3-107.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and

the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58, as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 32-702. Powers and duties of Department of Human Services.

Board of Children's Guardians, successors of trustees of the Industrial Home School of the District of Columbia, is abolished, and the powers and duties of such Board as specified and restricted by law are transferred to the Depart-

ment of Human Services. (Feb. 28, 1923, 42 Stat. 1361, ch. 148, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2; 1973 Ed., § 32-502.)

Cross references. — As to officers, trustees, or directors of charitable institutions not dealing with the institution for financial gain, see § 32-1206.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order

also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 32-703. Exchange; sale and use of School site; acquisition of new site and buildings.

The Secretary of the Navy is hereby authorized and empowered to convey to the District of Columbia, free from all encumbrances and without costs to the District of Columbia, all right, title, and interest of the United States of America to that portion of the Naval Observatory grounds, with the improvements thereon, lying outside of Naval Observatory Circle and east of Massachusetts Avenue Northwest, Washington, District of Columbia, containing fourteen and four hundred and forty-nine one-thousandths acres, more or less, and also that other portion lying outside of the adjoining said Naval Observatory Circle on the south, containing one and seven hundred and six one-thousandths acres, more or less, in consideration of which the Mayor of the District of Columbia is authorized and empowered to convey to the United States of America, free from all encumbrances and without cost to the United States of America, all right, title, and interest of the District of Columbia to that portion of the Industrial Home School site, with the improvements thereon, lying within said Naval Observatory Circle, containing approximately six and seventy-six one-hundredths acres: Provided, that the said Mayor is further authorized and empowered on behalf of the District of Columbia to utilize or sell, as he sees fit, all of that remaining portion of the said Industrial Home School site with the improvements thereon lying outside of the said Observatory (1,000-foot radius) Circle, and also all of the land and improvements thereon east of Massachusetts Avenue and south of said Naval Observatory Circle, hereunder authorized to be acquired from the United States of America: Provided further, that if utilized the land shall be used for school, playground or highway purposes or transferred to the Director of the National Park Service to become part of the park system of the District of Columbia: Provided further, that all of the proceeds from the sale of the aforesaid Industrial Home School property and one-half of the proceeds from the sale of

any of said lands mentioned as lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the District of Columbia and made available for the purchase of a site and the erection thereon of suitable buildings for a new Industrial Home School: Provided further, that the remaining half of the proceeds from the sale of any of said land lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the Naval Observatory: And provided further, that the said Mayor of the District of Columbia shall be permitted to continue to use all of the Industrial Home School property herein mentioned until such time as it may have acquired another site and constructed suitable buildings thereon in which to house the inmates of said Industrial Home School. The Secretary of the Navy, on behalf of the United States, and the Mayor, on behalf of the District of Columbia, are hereby authorized to execute and deliver all instruments necessary to accomplish the aforesaid purposes. (Mar. 3, 1927, 44 Stat. 1386, ch. 354, §§ 1, 2; 1973 Ed., § 32-503.)

Cross references. — As to execution of instruments, see § 1-303.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Office of Public Buildings and Parks abolished. — The Office of Public Buildings and Public Parks of the National Capital was abolished and the functions thereof were transferred to the Office of National Parks, Buildings, and Reservations of the Department of the Interior by Executive Order No. 6166, § 3, June 10, 1933. The name of the latter office was changed to "National Park Service" by the Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1. The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303(b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of the Federal Works Administrator were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Office of Federal Works Administrator was abolished by § 103(b) of said Act.

§ 32-704. Disposition of moneys from Industrial Home School.

All moneys received at the Industrial Home School as income from sale of products and from payment of board or of instruction or otherwise shall be paid into the Treasury of the United States to the credit of the District of Columbia. (Feb. 25, 1929, 45 Stat. 1292, ch. 314; 1973 Ed., § 32-504.)

CHAPTER 8. FOREST HAVEN.

Sec.	Sec.
32-801. Authority to acquire site and erect buildings; title to, and jurisdiction over, land.	32-803. Sale of products; disposition of proceeds.
32-802. Control and supervision; name.	32-804. Severability.

§ 32-801. Authority to acquire site and erect buildings; title to, and jurisdiction over, land.

The Mayor of the District of Columbia is authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings for a home and school for feeble-minded persons. The title to said land is to be taken directly to and in the name of the United States. But the land so acquired shall be under the jurisdiction of the Mayor of the District of Columbia as agent of the United States. The persons are to be admissible to said home and school and the proceedings with reference to securing such admission are to be in accordance with law. (Feb. 28, 1923, 42 Stat. 1360, ch. 148, § 1; 1973 Ed., § 32-601.)

Section references. — This section is referred to in §§ 21-1101 and 32-802.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-802. Control and supervision; name.

The institution for the custody, care, education, training, and treatment of substantially retarded persons, established by § 32-801, shall be under the control and supervision of the Department of Human Services of the District, and shall be known as Forest Haven. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2; Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 1(1); 1973 Ed., § 32-602.)

Cross references. — As to powers and duties of Board of Public Welfare, see § 3-101 et seq.

As to rewards for apprehension of fugitives from welfare institutions, see § 24-426.

As to officers, trustees, or directors of charitable institutions not dealing with the institution for financial gain, see § 32-1206.

Section references. — This section is referred to in § 21-1101.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of plan-

ning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of

the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 32-803. Sale of products; disposition of proceeds.

The Superintendent of the said institution may sell such of the farm, greenhouse, and garden products, and the products of the industrial shops as may not be required in the maintenance and conduct of the home and school, and the funds so secured shall be paid into the Treasury of the United States to the credit of the General Fund of the District of Columbia. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 5; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 32-606.)

§ 32-804. Severability.

The invalidity of any part of this chapter shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part. (Mar. 3, 1925, 43 Stat. 1141, ch. 460, § 28; 1973 Ed., § 32-629.)

CHAPTER 9. WASHINGTON HUMANE SOCIETY.

Sec.	Sec.
32-901. Incorporation; name.	32-908. Authority to prevent cruelty to children.
32-902. Society to have certain officers.	32-909. Enforcement of laws by Mayor — Protection of children.
32-903. Officers to be chosen from members.	32-910. Same — Cruelty to animals.
32-904. Bylaws.	32-911. Power to alter, amend or repeal provisions.
32-905. Police to arrest law violators at request of member; evidence of membership.	
32-906. Disposition of fines.	
32-907. Provisions effective throughout District.	

§ 32-901. Incorporation; name.

N. P. Chipman, J. P. Newman, B. Peyton Brown, John A. L. Morrell, Mathew G. Emery, Joseph H. Bradley, senior, William R. Woodward, E. Whittlesey, Warren Choate, Andrew B. Duvall, A. S. Solomons, W. G. Metzertott, Alexander R. Shepperd, S. J. Bowen, H. M. Sweeney, Benjamin E. Gittings, William Tucker, Charles H. Lane, W. Burris, William McPheeters, E. F. N. Faehetz, J. L. Gatchel, John R. Elvans, Edgar I. Booraem, L. H. Hopkins, Thomas P. Keene, W. D. Blackford, F. H. Day, J. Sayles Brown, William Lanborn, E. L. Corbin, N. A. West, John R. Arrison, W. A. Farlee, Benjamin F. Fuller, Robert A. Slater, Alonzo Bell, A. T. Kinney, John J. Jett, A. M. Scott, A. C. White, A. E. Newton, A. S. Taylor, William H. Rowe, Robert Reyburn, W. H. Slater, John C. Parker, William J. Wilson, S. S. Baker, A. Jones, S. R. Bond, John F. Cook, D. W. Anderson, George A. Hall, Charles H. Moulton, John Edwin Mason, Allison Nailor, junior, David A. Burr, T. C. Grey, R. H. Marsh, Thomas Perry, George F. Gulick, and Theodore F. Gatchel, all of the District of Columbia, and such other persons as were associated with them in conformity to this chapter, and their successors duly chosen, were constituted and created a body corporate in the District of Columbia, to be known as the Washington Humane Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 1; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1; 1973 Ed., § 32-201.)

Section references. — This section is referred to in §§ 32-907 and 32-911.

§ 32-902. Society to have certain officers.

The officers of said corporation shall consist of a president, 5 vice-presidents, 1 secretary, 1 treasurer, an executive committee of 11 members, and such other officers as shall from time to time seem necessary to this Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 2; 1973 Ed., § 32-202.)

Section references. — This section is referred to in §§ 32-907 and 32-911.

§ 32-903. Officers to be chosen from members.

The foregoing officers shall be chosen from among the members of the Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 3; 1973 Ed., § 32-203.)

Section references. — This section is referred to in §§ 32-907 and 32-911.

§ 32-904. Bylaws.

The said Society, for fixing the terms of admission of its members, for the government of the same, for the election, changing, and altering the officers above named, and for the general regulation and management of its affairs, shall have power to form a code of bylaws, not inconsistent with the laws of the District of Columbia, or of the United States, which code, when formed and adopted at a regular meeting, shall, until modified or rescinded, be equally binding as this chapter upon the Society, its officers, and members. (June 21, 1870, 16 Stat. 158, ch. 135, § 4; 1973 Ed., § 32-204.)

Section references. — This section is referred to in §§ 32-907 and 32-911.

§ 32-905. Police to arrest law violators at request of member; evidence of membership.

Members of the Metropolitan Police force of the District of Columbia, upon application of a member of the Washington Humane Society who has viewed a violation of a law or regulation of the District for the prevention of cruelty to animals, shall arrest the offending party without a warrant, and take him before the Superior Court of the District of Columbia for trial. Proper evidence of membership to a police officer shall be the exhibition of a badge or certificate of membership in the Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 5; R.S., D.C., § 998; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Dec. 23, 1963, 77 Stat. 618, Pub. L. 88-241, § 12; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 32-205.)

Cross references. — As to criminal prosecution, see § 22-801 et seq.

As to arrests under statutes relating to the prevention of cruelty to animals, see § 22-804.

As to arrest of persons keeping animals or fowls for fighting or baiting, see § 22-809.

As to arrest without warrant, see § 23-581.

Section references. — This section is referred to in §§ 22-804, 22-809, 32-907, and 32-911.

§ 32-906. Disposition of fines.

One half of all the fines collected through the instrumentality of the Society or its agents, for violations of such laws shall accrue to the benefit of said Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 6; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 48; 1973 Ed., § 32-206.)

Cross references. — As to association entitled to fines and forfeitures levied in prosecution of laws to prevent cruelty to animals, see § 22-806.

Section references. — This section is referred to in §§ 32-907 and 32-911.

§ 32-907. Provisions effective throughout District.

The provisions of §§ 32-901 to 32-907 shall be general within the boundaries of the District of Columbia. (June 21, 1870, 16 Stat. 159, ch. 135, § 7; 1973 Ed., § 32-207.)

Section references. — This section is referred to in § 32-911.

§ 32-908. Authority to prevent cruelty to children.

The Washington Humane Society is authorized to extend its operations to the protection of children as well as animals from cruelty and abuse. In pursuance thereof the said Society may cause its proper officers or agents to prefer complaints, before any court in the District of Columbia having jurisdiction, for the violation of any law relating to or affecting the protection of children in said District, and by its proper attorney may aid in bringing the facts before such court in any proceeding taken. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1; 1973 Ed., § 32-208.)

Cross references. — As to age of majority, see § 30-401.

Jurisdiction over children. — This section gives the Washington Humane Society authority to prefer complaints before any court

of the District having jurisdiction in any case where the welfare of a child is involved. *Richardson v. Browning*, 18 F.2d 1008 (D.C. Cir. 1927).

§ 32-909. Enforcement of laws by Mayor — Protection of children.

The Mayor of the District of Columbia shall, by the police force of said District, aid the said Society, its officers and agents, in the enforcement of all laws relating to or affecting the protection of children; and the Mayor of the said District, and his successors, are authorized, in their discretion, to detail, from time to time, an officer or officers to aid specially in the work of said Society, or they may commission any duly appointed agents of said Society special police officers, without compensation; and such agents or officers shall have power to arrest, without warrant, all persons violating in their presence or sight any law relating to or affecting the protection of children, or other parties so offending by virtue of a warrant issued by the Family Division of the Superior Court, which offenders shall be taken by such agents or officers before the said Family Division of the Superior Court for trial. Said agents or officers are also hereby empowered to bring before the said Court any child who is subjected to cruel treatment, willful abuse, or neglect, or any child under 17 years of age found in a house of ill fame; and said Court may commit such child to an orphan asylum or other public charitable institution in the District of Columbia, with the consent of the constituted authorities of such asylum or

institution, or make such other disposition thereof as provided by law in cases of vagrant, destitute, or abandoned children. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 2; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(h); 1973 Ed., § 32-209.)

Cross references. — As to age of majority, see § 30-401.

Section references. — This section is referred to in § 3-116.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. *In re Kroll*, App. D.C., 43 A.2d 706 (1945).

Court control over minor. — Marriage of an incorrigible minor does not automatically terminate the control of the Family Division of the Superior Court over her. *Richardson v. Browning*, 18 F.2d 1008 (D.C. Cir. 1927).

§ 32-910. Same — Cruelty to animals.

The Mayor of the District of Columbia is authorized, in his discretion, to detail from time to time 1 or more members of the Metropolitan Police force to aid the Washington Humane Society in the enforcement of laws relating to cruelty to animals as well as of the laws relating to cruelty to children. (June 25, 1892, 27 Stat. 60, ch. 135, § 2; 1973 Ed., § 32-210.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-911. Power to alter, amend or repeal provisions.

Congress shall have power to alter, amend, or repeal §§ 32-901 to 32-907 at any time. (June 21, 1870, 16 Stat. 159, ch. 135, § 8; 1973 Ed., § 32-211.)

CHAPTER 10. PLACEMENT OF CHILDREN IN FAMILY HOMES.

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| <p>Sec.
 32-1001. Purpose of chapter.
 32-1002. "Child-placing agency" defined; license required.
 32-1003. Appointment of committee to promulgate rules and regulations; composition and tenure.
 32-1004. Application for issuance of licenses.
 32-1005. Persons and agencies authorized to place children; custody, control and visitation by agencies; confidentiality of records.
 32-1006. Agreements with foreign agencies.
 32-1007. Parental rights; termination or relinquishment; vesting in agencies or</p> | <p>Sec.
 Mayor; exercise in adoption proceedings.
 32-1008. Refusal to issue, revocation or suspension of licenses; reinstatement or reissuance.
 32-1008.1. Agency required to check enumerated registers for child abuse or neglect; effect of failure of agency to check or obtain information.
 32-1009. Violations; prosecution.
 32-1010. Investigations and inspections.
 32-1011. Authority to charge or receive compensation for services; inability to pay adoption costs.</p> |
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§ 32-1001. Purpose of chapter.

The purpose of this chapter is to secure for each child under 16 years of age who is placed in a family home, other than his own or that of a relative within the third degree, such care and guidance as will serve the child's welfare and the best interests of the District of Columbia; and to secure for him custody and care as near as possible to that which should have been given him by his parents. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 1; 1973 Ed., § 32-781.)

Cross references. — As to adoption, see Chapter 3 of Title 16.

Purpose of this chapter is to regulate procedure for placing children for adoption to protect children and parents from corrupt, irresponsible, careless, or untrained intermediaries. *Goodman v. District of Columbia*, App. D.C., 50 A.2d 812 (1947).

Application of chapter. — This chapter was intended to apply only to situations in which the District has an interest. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

A minimal or coincidental geographical contact alone is insufficient and a substantial additional nexus is required for the application of

this chapter. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

District interest protected by chapter. — To protect the parental rights of natural mothers residing in the District is a District of Columbia government interest protected by this chapter. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

There is no entitlement to trial by jury under this chapter. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

Baby Broker Act is not unconstitutional as vague and indefinite. *Dobkin v. District of Columbia*, App. D.C., 194 A.2d 657 (1963).

Cited in *C.K.C. v. Children's Adoption Resource Exch.*, 118 WLR 1305 (Super. Ct. 1990).

§ 32-1002. "Child-placing agency" defined; license required.

Any person, firm, corporation, association, or public agency that receives or accepts a child under 16 years of age and places or offers to place such child for temporary or permanent care in a family home other than that of a relative within the third degree shall be deemed to be maintaining a child-placing agency. No child-placing agency shall be maintained in the District of Columbia without a license issued by the Mayor of the District of Columbia; provided, that notwithstanding any provisions of § 32-1004 such a license shall be issued forthwith to any corporation or association chartered by special act of Congress and having under its charter the purposes or powers of a child-

placing agency as herein defined. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 2; 1973 Ed., § 32-782; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983.)

Legislative history of Law 3-59. — Law 3-59 was introduced in Council and assigned Bill No. 3-193, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on January 22, 1980, and February 5, 1980, respectively. Signed by the Mayor on February 26, 1980, it was assigned Act No. 3-155 and transmitted to both Houses of Congress for its review.

Intent of section. — This section is intended to prevent fly-by-night groups which might spring up, engage in occasional unregulated placements, and utilize the District as a base for their operation. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

Persons excluded from this chapter are relatives within the third degree of the child, who place the child with a relative who is also within the third degree of the child. *Galison v.*

District of Columbia, App. D.C., 402 A.2d 1263 (1979).

Lawyer as "child-placing agency." — A lawyer, in placing children for adoption, is not exempt from this chapter notwithstanding he acts without compensation and with humane motives, and, to place babies for adoption, he must have a license as a child-placing agency. *Goodman v. District of Columbia*, App. D.C., 50 A.2d 812 (1947).

Violation of Baby Broker Act. — Where defendant arranged for a medical examination of a child, and presented the mother with a consent form for the adoption, gave the natural mother money from the adopting mother, and did not possess a license to place any child for adoption, defendant was guilty of violation of Baby Broker Act, as codified in this chapter. *Anderson v. District of Columbia*, App. D.C., 154 A.2d 717 (1959).

§ 32-1003. Appointment of committee to promulgate rules and regulations; composition and tenure.

(a) The Mayor shall appoint a committee to formulate and adopt rules and regulations, prescribing standards of placement, care, and services to be required of child-placing agencies, pursuant to the intent and purposes of this chapter. The committee shall be composed of 3 representatives of the Department of Human Services, of whom 2 shall be from the Commission on Social Services, and one shall be from the Office of Licensing and Certification; 8 representatives of the charitable organizations of the District of Columbia licensed to place children in family homes who shall be representative of child-placing agencies, including, but not limited to, foster care, group home care, and infant, special needs, and international adoptions; and 5 public members, including a lawyer, a representative of the medical profession, and individuals or representatives of organizations, other than child-placing organizations, concerned with the adoption of foster care of children. The Mayor shall appoint one member to serve as chairperson. The term of office of each member of the committee shall be 3 years, staggered so that one third of the appointments expire each year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Upon expiration of his or her term of office, a member shall continue to serve until his or her successor is appointed.

(b) Rules and regulations promulgated by the committee shall be:

(1) Issued according to Chapter 15 of Title 1 within 12 months of the appointment of the committee;

(2) Reviewed by the committee annually and amended when deemed necessary; and

(3) Subject to the approval of the Mayor. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 3; June 8, 1954, 68 Stat. 246, ch. 273, § 1; 1973 Ed., § 32-783; Apr. 23, 1980, D.C. Law 3-59, § 2(a), (b), 27 DCR 983; Aug. 21, 1982, D.C. Law 4-141, § 2(a), (b), 29 DCR 2867.)

Section references. — This section is referred to in §§ 32-1006 and 32-1011.

Legislative history of Law 3-59. — See note to § 32-1002.

Legislative history of Law 4-141. — See note to § 32-1008.1.

References in text. — The Department of Human Resources was replaced by the Department of Human Services, pursuant to Reorga-

nization Plan No. 2 of 1979, dated February 21, 1980.

Advisory group to committee established. — See Commissioner's Order No. 71-13, dated January 19, 1971.

Cited in *In re H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

§ 32-1004. Application for issuance of licenses.

(a) An application for a license as a child-placing agency shall be made to the Mayor on forms provided by him and in the manner prescribed. Before such license is issued the Department of Human Services shall arrange to have an investigation made of the activities and standards of care of the agency and shall consult with persons having official connection with the agency. If the Department is satisfied as to the good character and intent of the applicant, and that the agency is adequately financed, and that its staff, procedures, and services conform to the established standards of care, said Department shall recommend to the Mayor that a license be issued.

(b) A provisional license may be issued to any agency which is temporarily unable to conform to all the provisions of the established standards of care upon terms and conditions prescribed by the Mayor upon recommendation of the Department of Human Services.

(c) All licenses shall be issued for one year from the date thereof and may be renewed annually on the application of the agency, except that provisional licenses may be issued for not more than 3 successive years. (Apr. 22, 1944, 58 Stat. 193, ch. 174, § 4; June 8, 1954, 68 Stat. 247, ch. 273, § 2; 1973 Ed., § 32-784; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983.)

Section references. — This section is referred to in § 32-1002.

Legislative history of Law 3-59. — See note to § 32-1002.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order

also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 32-1005. Persons and agencies authorized to place children; custody, control and visitation by agencies; confidentiality of records.

(a) No person other than the parent, guardian, or relative within the third degree, and no firm, corporation, association, or agency, other than a licensed child-placing agency, may place or arrange or assist in placing or arranging for the placement of a child under 16 years of age in a family home or for adoption. In accordance with the rules and regulations promulgated hereunder, any licensed child-placing agency may accept children for placement in family homes and shall have and maintain care, custody, and control of any such child until returned to the person from whom received or until responsibility for the child is transferred to another child welfare agency or terminated by the order of a court of competent jurisdiction.

(b) Every such agency shall keep and maintain careful supervision of all children under its care, including those placed in family homes, and its officers or agents shall visit all such homes and families as often as may be necessary to promote the welfare of such child; provided, that legally adopted children shall not be subject to such supervision and visitation, or other supervision or visitation. Every such agency shall keep such records as shall be required by the rules and regulations promulgated hereunder and all records regarding children and all facts learned about children and their parents or relatives shall be deemed confidential.

(c) Records which are deemed confidential shall not be available for inspection by nor disclosed to any person, firm, corporation, association, or public agency, except that such records shall be available for inspection by authorities authorized by law to license child-placing agencies. Such records shall not be subject to judicial subpoena in collateral proceedings, except that the licensed child-placing agency and the Mayor in accordance with rules and regulations promulgated hereunder, may make such records, or any information contained in such records, available:

(1) When the Mayor or such agency determines that any information contained in such records shall promote or protect the interest and welfare of any child the Mayor or such agency has served; and

(2) For the purpose of research if adequate safeguards are taken against the disclosure or publication in any manner of the identity of any person contained in such records. (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 5; June 8, 1954, 68 Stat. 247, ch. 273, § 3; 1973 Ed., § 32-785; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983.)

Legislative history of Law 3-59. — See note to § 32-1002.

Contact affecting protected District interest. — Some contact affecting a District of Columbia governmental interest which is protected by this chapter must be shown before this section becomes applicable. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

Substantial nexus required. — This sec-

tion applies only to placements which have a substantial nexus with the District. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

Violation of Baby Broker Act. — Where defendant arranged for a medical examination of a child, and presented the natural mother with a consent form for the adoption, gave the natural mother money from the adopting mother, and did not possess a license to place

any child for adoption, defendant was guilty of violation of Baby Broker Act, as codified in this chapter. *Anderson v. District of Columbia*, App. D.C., 154 A.2d 717 (1959).

§ 32-1006. Agreements with foreign agencies.

Notwithstanding the provisions of this chapter, the Mayor is authorized to enter into agreements with any person, firm, corporation, association, or public agency licensed or authorized by a state or country for the care and placement of minors, permitting such person, firm, corporation, association, or public agency to place nonresident children in foster or adopting homes in the District of Columbia. The Mayor shall act pursuant to regulations promulgated as provided in § 32-1003. (Apr. 22, 1944, ch. 174, § 5A; June 8, 1954, 68 Stat. 247, ch. 273, § 4; 1973 Ed., § 32-785a; Apr. 23, 1980, D.C. Law 3-59, § 2 (a), 27 DCR 983.)

Legislative history of Law 3-59. — See note to § 32-1002.

§ 32-1007. Parental rights; termination or relinquishment; vesting in agencies or Mayor; exercise in adoption proceedings.

(a)(1) Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of the parent or parents of such child have been terminated by order of the court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedure. Minority of a natural parent shall not be a bar to such parent's relinquishment to a licensed agency.

(2) For purposes of this section, "licensed child-placing agency" shall mean any child-placing agency licensed pursuant to this chapter or any child-placing agency licensed or authorized by any state, territory, or possession of the United States, by the Commonwealth of Puerto Rico, or by any foreign country or any state, province or other governmental division of any foreign country for the care and placement of minors.

(b) No relinquishment of parental rights shall be made within the first 72 hours after birth. Prior to any relinquishment any corporation, association, or public agency that conducts a licensed child-placing agency shall provide counseling, by a professional social worker, to the relinquishing parent regarding the alternative services available in addition to psychological and emotional counseling to both the parent and the child.

(c) Any relinquishment of parental rights executed by a single natural parent or by both natural parents, other than by court order as provided in this subsection, may be automatically revoked by a verified writing executed by the single parent or both parents respectively and submitted to the agency within 10 calendar days of executing a legal relinquishment. Where both natural parents execute a relinquishment of parental rights, other than by court order, either parent may automatically revoke his or her relinquishment of parental

rights by executing a verified writing submitted to the agency within 10 calendar days of executing the relinquishment. The rights of the parent not seeking custody shall be terminated and such parent shall not have the power to obstruct the revocation. If the 10th day falls on a Saturday, Sunday, or legal holiday, the deadlines for filing the revocation shall be extended to the next working day. No relinquishment of parental rights shall be considered final until the revocation period has expired with no revocation having been made by the natural parent. Automatic revocation of relinquishment can be exercised only once.

(d) A waiting period of 30 days from the date of revocation of the first relinquishment shall expire before a second relinquishment can be executed. A relinquishment, if exercised a second time, shall be irrevocable, unless an additional right to revoke is granted by court order upon a finding by the court that the relinquishment was not given voluntarily, e.g., the relinquishment was induced by fraud, coercion, material mistake or other factors that bear on a determination of voluntariness.

(e) Any relinquishment of parental rights and revocation thereof may be transferred from one licensed child-placing agency to another child-placing agency in which case the second agency shall assume all the rights and duties of the first agency.

(f) Except in proceedings for adoption, no parent may voluntarily assign or otherwise transfer to another his rights and duties with respect to the permanent care and control of a child under 16 years of age, unless such relinquishment of parental rights is made to a licensed child-placing agency. Such relinquishment of parental rights shall be a statement in writing signed by the person relinquishing such parental rights who shall subscribe his name thereto and acknowledge the same before a representative of the licensed child-placing agency in the presence of at least one witness. Each transfer or relinquishment of parental rights and any revocation of said relinquishment shall be recorded and filed by the child-placing agency in a properly sealed file in the Family Division of the Superior Court for the District of Columbia within 20 days after the expiration of the revocation period. Any subsequent relinquishment shall be filed by the child-placing agency in a properly sealed file in the Family Division of the Superior Court of the District of Columbia within 30 days after the date of relinquishment. The seal of said file shall not be broken except for good cause shown and upon the written order of a judge of said Court.

(g) The relinquishment form used by the child-placing agency shall contain the following notice to the parent in clear and conspicuous language:

(1) Notice to the relinquishing parent of the parent's automatic right of revocation within 10 calendar days from the date of relinquishment;

(2) Notice that a relinquishment if exercised a second time shall be irrevocable;

(3) Notice that the child-placing agency has a statutory obligation to file all notices of the relinquishment and revocation thereof with the Superior Court for the District of Columbia.

(h) Relinquishing parents shall be orally advised of their rights as described in subsection (g) of this section. The child-placing agency shall orally advise the

relinquishing parent as to the nature and consequences resulting from the execution of the relinquishment document prior to relinquishment.

(i) The Mayor or his designated agents are empowered to accept permanent care and guardianship of any child by a legally executed relinquishment of parental rights and when vested with such parental rights shall exercise them in the same manner as prescribed herein for a licensed child-placing agency. Such parental relinquishment taken by the Mayor or his designated agents shall be subject to the same rights and requirements as to form, transfer, and disposition as are prescribed herein for a licensed child-placing agency. (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 6; June 8, 1954, 68 Stat. 248, ch. 273, § 5; Apr. 11, 1956, 70 Stat. 113, ch. 204, § 107(c); Aug. 21, 1959, 73 Stat. 413, Pub. L. 86-177, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(i); 1973 Ed., § 32-786; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983; Apr. 4, 1984, D.C. Law 5-72, §§ 2, 3, 31 DCR 732.)

Cross references. — As to Family Division of the Superior Court, see § 11-1101.

Section references. — This section is referred to in §§ 3-114, 3-115, 3-117, and 16-304.

Legislative history of Law 3-59. — See note to § 32-1002.

Legislative history of Law 5-72. — Law 5-72 was introduced in Council and assigned Bill No. 5-135, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 3, 1984, and January 31, 1984, respectively. Signed by the Mayor on February 16, 1984, it was assigned Act No. 5-107 and transmitted to both Houses of Congress for its review.

References in text. — The reference to "this subsection," in the first sentence in subsection (c), does not reflect the amendment of this section by D.C. Law 5-72. The reference should probably now read "subsection (a) of this section."

Purpose of granting parental rights to agency. — Grant of parental rights to a child-placing agency as opposed to parental duties is primarily for purpose of vesting the agency with the authority to consent to adoption. *District of Columbia v. H.J.B.*, App. D.C., 359 A.2d 285 (1976).

Agency relationship with children in its custody. — Charitable corporation organized to accept custody and control of children brought into the country for adoption and authorized to prevent them from becoming public charges does not create a parental relation between the committee and those children and does not create third-party rights in the District of Columbia to reimbursement for expenses incurred in connection with involuntary commitment of an orphan who had been brought into the country by the corporation for adoption. *District of Columbia v. H.J.B.*, App. D.C., 359 A.2d 285 (1976).

Court authority insufficient to terminate parental rights. — Court's *parens patriae* power is insufficient authority for its enactment of rule permitting termination of parental rights in nonadoption proceedings. In re C.A.P., App. D.C., 356 A.2d 335 (1976).

Keeping of record reflects District's interest. — This section connotes the District's interest in the stability of District families and the welfare of District children by requiring that an official, albeit sealed, record be kept of the placement of the District's children. *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

Methods of adoption. — Adoption may be accomplished in 2 ways. Natural parents may execute a "written statement of consent" to the adoption of the child by another person, under § 16-304(a); or they may execute, and have recorded and filed with the Family Division of the Superior Court, a "relinquishment of parental rights," under this section. *J.M.A.L. v. Lutheran Social Servs. of Nat'l Capital Area, Inc.*, App. D.C., 418 A.2d 133 (1980).

Surrogate parenting contracts. — Although surrogate parenting contracts are illegal in the District of Columbia as of March 17, 1993, since the filing of petitions predated that date, this policy played no part in the decision. In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

Jurisdiction. — The jurisdictional prerequisite is satisfied when an adoption petition is filed by petitioners who cannot meet the residency requirements of § 16-301(b)(1) or (2). In re J.W.C., 122 WLR 249 (Super. Ct. 1994).

Unilateral revocation precluded. — Subsection (a) of this section precludes a unilateral revocation by a parent under any circumstances. *J.M.A.L. v. Lutheran Social Servs. of Nat'l Capital Area, Inc.*, App. D.C., 418 A.2d 133 (1980).

Irrevocable relinquishment once executed. — Once a relinquishment has been executed and acted upon by filing with the Court pursuant to subsection (a) of this section, it is irrevocable absent a showing that it has been given involuntarily. *J.M.A.L. v. Lutheran Social Servs. of Nat'l Capital Area, Inc.*, App. D.C., 418 A.2d 133 (1980).

Cause justifying revocation of relinquishment. — Absent "consent of all the parties," including child-placing agencies and prospective adoptive parents, the only "cause" justifying a court-ordered revocation of a natural parent's relinquishment of their parental rights once filed with the Court, pursuant to subsection (a) of this section, will be a conclusion that the relinquishment has not been given "voluntarily"; e.g., it has been induced by fraud, coercion, material mistake, or other factors that bear on a determination of voluntariness. *J.M.A.L. v. Lutheran Social Servs. of Nat'l Capital Area, Inc.*, App. D.C., 418 A.2d 133 (1980).

Policy. — Subsection (c) is a departure from pre-existing law which permitted revocation only upon written consent of all parties to relinquishment or court order. Of particular importance is the council's rejection of the view that the child's stability is the paramount consideration when a parent seeks to revoke a relinquishment. Instead, the council adopted a policy that children should be raised by their birth parents notwithstanding the emphasis of the courts on stability for the child. *C.K.C. v. Children's Adoption Resource Exch.*, 118 WLR 1305 (Super. Ct. 1990).

Transfer of rights to agency. — The transfer of all parental rights and responsibilities with to an agency is tantamount to placing with that agency "the legal care, custody, or control" of the child pursuant to § 16-301(b)(3). In re *J.W.C.*, 122 WLR 249 (Super. Ct. 1994).

Transfer of rights limited to agreement of parents. — Neither natural mothers, natural fathers nor fathers' wives intended that "permanent care and guardianship" of a child, as used in subdivision (a)(1) of this section, would be transferred to the agency, enabling the agency to consent to any adoption except the one which had been agreed upon. There was therefore no basis for the assertion of jurisdiction by the Superior Court under § 16-301(b). In re *S.G.*, App. D.C., 663 A.2d 1215 (1995).

Notice concerning revocation of relinquishment of parental rights. — As a result of failure by Department of Human Services to include in its relinquishment form a notice of revocation rights calling for a verified writing within 10 days, mother was not necessarily precluded from having effectuated a timely oral

revocation. In re *D.R.*, App. D.C., 541 A.2d 1260 (1988).

Notice was insufficient notice under subsection (g)(1) of this section of the parent's automatic right of revocation of relinquishment of parental rights; when a statute requires notice of a right, that necessarily implies notice of all the material procedures required for asserting that right. In re *D.R.*, App. D.C., 541 A.2d 1260 (1988).

Reliance upon executed relinquishment. — Once a licensed child-placing agency has filed an executed relinquishment of parental rights with the Court, some reliance already has been established, in that financial and emotional efforts to care for the child, through foster care or adoption, have been initiated. *J.M.A.L. v. Lutheran Social Servs. of Nat'l Capital Area, Inc.*, App. D.C., 418 A.2d 133 (1980).

Delegation of government function. — Child placement agencies are delegated the government function of accepting the relinquishment of parental rights from natural parents and locating suitable adoptive homes, as well as investigating and reporting to the court about the suitability of the placement and consenting to the adoption. In re *H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

Notice to putative father of adoption proceedings. — A child placement agency, upon notification of the mother's intent to relinquish her parental rights to the agency, should inform the putative father that (1) the mother (named) of a child has stated her intent to relinquish her parental rights to her child to the agency; (2) as a child placement agency licensed by the District of Columbia, it seeks to place the child for adoption by new parents, but if the putative father acknowledges paternity he himself has a right to seek custody of the child; (3) if the putative father does want custody, he should inform the child placement agency immediately of his intentions and should retain an attorney; (4) assertion of the putative father's right to custody may involve a formal legal proceeding before the Family Division of the Superior Court (address provided), at which a judge will preside; (5) before the formal proceeding occurs, the putative father will receive notice of the hearing of the case and an order to appear; and (6) any information which the putative father provides the child placement agency shall be included in a report to the Family Division on the placement agency's recommendation for the best placement of the child. In re *H.R.*, App. D.C., 581 A.2d 1141 (1990), cert. denied, 513 U.S. 809, 115 S. Ct. 58, 130 L. Ed. 2d 16 (1994).

§ 32-1008. Refusal to issue, revocation or suspension of licenses; reinstatement or reissuance.

The Mayor may refuse to reissue or may revoke or suspend the license of any child-placing agency after full hearing on proof of violation of any provisions of this chapter or the rules and regulations promulgated hereunder. Before any license shall be suspended or revoked the holder thereof shall have notice in writing of the charge or charges and shall, at the date and place specified in said notice, which shall be at least 5 days after the service thereof, be given a hearing by said Mayor, or his designated agents, with a full opportunity to produce testimony in his, her, or its behalf. Any licensee whose license has been suspended or revoked may, after the expiration of 90 days, on application to the said Mayor, have the same reinstated or reissued upon satisfactory proof that the disqualification has ceased. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 7; 1973 Ed., § 32-787; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983.)

Cross references. — As to administrative procedure, see § 1-1501 et seq.

As to judicial review, see §§ 1-1510 and 11-722.

Legislative history of Law 3-59. — See note to § 32-1002.

§ 32-1008.1. Agency required to check enumerated registers for child abuse or neglect; effect of failure of agency to check or obtain information.

Prior to placement of a child in a family home, a child-placing agency licensed in the District of Columbia and the Department of Human Services shall:

(1) Obtain written consent from applicants for release of information from:

(A) The D.C. Child Protection Register established under Chapter 21 of Title 6;

(B) Registers of child abuse and neglect located in all states, territories and possessions of the United States in which the applicant has resided within the previous 5 years; and

(C) If applicable, from any registers maintained by any branch of the armed forces of the United States.

(2) Check the proposed placement of a child in a family home with the Child Protection Register and, where applicable, with other registers pursuant to subparagraphs (B) and (C) of paragraph (1) of this section for the purpose of determining whether there has been a report of child abuse or neglect. Failure of an agency to make such check prior to placement may result in suspension, revocation, or refusal to renew that agency's child placement license. Failure of any agency to obtain information from a register due to policies and procedures in those jurisdictions other than the District of Columbia or the various branches of the armed forces of the United States, prohibiting release of such information, shall not constitute a violation under this paragraph. (Apr. 22, 1944, 58 Stat. 193, § 7a, as added Aug. 21, 1982, D.C. Law 4-141, § 2(c), 29 DCR 2867.)

Section references. — This section is referred to in § 6-2113.

Legislative history of Law 4-141. — Law 4-141 was introduced in Council and assigned Bill No. 4-164, which was referred to the Committee on Human Services. The Bill was

adopted on first and second readings on May 25, 1982, and June 8, 1982, respectively. Signed by the Mayor on June 30, 1982, it was assigned Act No. 4-207 and transmitted to both Houses of Congress for its review.

§ 32-1009. Violations; prosecution.

Any person, firm, corporation, association, or public agency who conducts a child-placing agency without a license as provided for in this chapter or who violates any of the provisions of this chapter shall, upon conviction, be fined not more than \$300 or imprisoned for not more than 90 days, or both. Prosecution for violations of such sections shall be upon information in the Criminal Division of the Superior Court of the District of Columbia by the Corporation Counsel of the District of Columbia. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 8; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 32-788; Oct. 5, 1985, D.C. Law 6-42, § 444, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Defendant charged with violating Baby Broker Act (this chapter) was not entitled to jury trial. *Dobkin v. District of Columbia*, App. D.C., 194 A.2d 657 (1963).

Cited in *Goodman v. District of Columbia*, App. D.C., 50 A.2d 812 (1947); *Galison v. District of Columbia*, App. D.C., 402 A.2d 1263 (1979).

§ 32-1010. Investigations and inspections.

The Department of Human Services is authorized to make such investigations and inspections as are necessary to carry out the provisions of this chapter. (Apr. 22, 1944, 58 Stat. 195, ch. 174, § 9; 1973 Ed., § 32-789.)

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the

former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Depart-

ment of Human Services by Reorganization (1990), cert. denied, 513 U.S. 809, 115 S. Ct. 58, Plan No. 2 of 1979, dated February 21, 1980. 130 L. Ed. 2d 16 (1994).
Cited in *In re H.R.*, App. D.C., 581 A.2d 1141

§ 32-1011. Authority to charge or receive compensation for services; inability to pay adoption costs.

Neither the Mayor nor any child-placing agency authorized to perform services in connection with placing a child in a family home for adoption may make or receive any charge or compensation whatsoever for such services, except that a licensed child-placing agency which is organized and operated exclusively for religious or charitable purposes and no part of the net earnings of which can inure to the benefit of any private shareholder or individual may be allowed to charge adoptive parents, within prescribed limits, for such services an amount not to exceed the average costs incurred; such average costs and prescribed limits to be determined in accordance with rules and regulations promulgated by the committee created by § 32-1003. Inability of adoptive applicants to pay for all or any part of such costs shall not be a disqualifying factor in determining whether applicants are suitable parents for the child. (Apr. 22, 1944, ch. 174, § 12; June 8, 1954, 68 Stat. 248, ch. 273, § 6; 1973 Ed., § 32-790; Apr. 23, 1980, D.C. Law 3-59, § 2(a), 27 DCR 983.)

Legislative history of Law 3-59. — See note to § 32-1002.

CHAPTER 10A. INTERSTATE COMPACT ON PLACEMENT OF CHILDREN.

Sec.

32-1041. Definitions.

32-1042. Authority to enter into and execute Compact.

Sec.

32-1043. Agreements with other states.

32-1044. Delinquent children, administrative hearing, judicial review.

§ 32-1041. Definitions.

The term “appropriate authority” as used in this compact means, with reference to the District, the Director of the Department of Human Services. (Sept. 20, 1989, D.C. Law 8-30, § 3, 36 DCR 4744.)

Legislative history of Law 8-30. — Law 8-30, “Interstate Compact on the Placement of Children Authorization Act of 1989,” was introduced in Council and assigned Bill No. 8-107, which was referred to the Committee on Human Services. The Bill was adopted on first and

second readings on May 30, 1989 and June 13, 1989, respectively. Signed by the Mayor on June 27, 1989, it was assigned Act No. 8-53 and transmitted to both Houses of Congress for its review.

§ 32-1042. Authority to enter into and execute Compact.

The Mayor of the District of Columbia (“District”) is authorized to execute a compact on behalf of the District with any state that legally joins the compact in the form substantially as follows:

ARTICLE I. Purpose and policy.

It is the purpose and policy of the party states to cooperate in the interstate placement of children to the end that:

(1) Each child who requires placement shall receive the maximum opportunity to be placed in a suitable environment with a person or institution that has appropriate qualifications and facilities to provide necessary and desirable care.

(2) The appropriate authority in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement in order to promote full compliance with applicable requirements for the protection of the child.

(3) The appropriate authority of the sending state may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(4) Appropriate jurisdictional arrangements for the care of children are promoted.

ARTICLE II. Definitions.

For the purposes of this compact the term:

(1) “Child” means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control.

(2) “Placement” means the arrangement for the care of a child in a family, boarding home, or child-care agency or institution, but does not include an

institution that cares for the mentally ill, mentally defective, or epileptic, an institution primarily educational in character, or a hospital or other medical facility.

(3) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by a public authority, a private person, or an agency, and whether for placement with a state or local public authority or private agency or person.

(4) "Sending state" means a party state, including the District of Columbia, an officer or employee of the sending state, a subdivision of a party state, an officer, employee, or court of the party state, or a person, corporation, association, charitable agency, or other entity that sends, brings, or causes to be sent or brought a child to another party state.

ARTICLE III. Conditions for placement.

(a) No sending state shall send, bring, or cause to be sent or brought into any other party state a child for placement in foster care or prior to a possible adoption, unless the sending state complies with each requirement set forth in this compact and applicable laws of the receiving state that govern the placement of children.

(b) Prior to sending, bringing, or causing a child to be sent or brought into a receiving state for placement in foster care or prior to a possible adoption, the sending state shall furnish the appropriate authority in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date, and place of birth of the child;

(2) The identity and address of the parents or legal guardian;

(3) The name and address of the person, agency, or institution to or which the sending state proposes to send, bring, or place the child; and

(4) A full statement of the reason for the proposed action and evidence of the authority for the proposed placement.

(c) The appropriate authority in a receiving state who receives notice pursuant to subsection (b) of this article may request of the sending state, and shall be entitled to receive, supporting or additional information necessary to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate authority in the receiving state notifies the sending state, in writing, that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. Penalty for illegal placement.

Any person or state who sends, brings, or causes to be sent or brought into a receiving state a child in violation of the terms of this compact may be punished or subjected to a penalty in either the sending or receiving state in accordance with the laws of each. In addition to liability for any punishment or penalty, each violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending state that authorizes it to place or care for children.

ARTICLE V. Retention of jurisdiction.

(a) The sending state shall retain jurisdiction over the child sufficient to determine all matters that relate to the custody, supervision, care, treatment, and disposition of the child that it would have had if the child had remained in the sending state, until the child is adopted, reaches the age of majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. The sending state shall continue to have financial responsibility for the support and maintenance of the child during the period of the placement. Nothing contained in this compact shall defeat a claim of jurisdiction by a receiving state to deal with an act of delinquency or crime committed in the receiving state.

(b) When the sending state is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state to provide for the performance of any service with respect to the child by the receiving state as agent for the sending state.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in the receiving state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending state without relieving the responsibility set forth in subsection (a) of this article.

ARTICLE VI. Institutional care of delinquent children.

A child adjudicated delinquent may be placed in an institution in another party state pursuant to this compact, but no placement shall be made unless the child is given a court hearing, with an opportunity to be heard after notice to the parent or guardian, before the child is sent to the party state for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending state; and

(2) Institutional care in the receiving state is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. Compact administrator.

The appropriate authority shall be the general coordinator of activities under this compact in his or her state and who, acting jointly with the appropriate authority of other party states, shall promulgate rules and regulations in accordance with the procedures established by subchapter I of Chapter 15 of Title 1.

ARTICLE VIII. Limitations.

This compact shall not apply if:

(1) A child is sent or brought into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his

guardian, or if the child is left with the relative or nonagency guardian in the receiving state.

(2) A child is placed, sent, or brought into a receiving state pursuant to any other interstate compact to which both the state from which the child is placed and the receiving state are parties, or to any other agreement between the sending and receiving states that has the force of law.

ARTICLE IX. Enactment and withdrawal.

This compact shall be open to joinder by any state, territory, or possession of the United States, the District, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any Canadian province. The compact shall be effective when the jurisdiction has enacted the compact into law. Withdrawal from this compact shall be by the enactment of a statute that repeals the compact, but the repeal shall not take effect until 2 years after the effective date of the statute that repeals the compact and written notice of the withdrawal has been given by the withdrawing state to the executive head of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, or obligations under this compact of any sending state with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. Construction and severability.

The provisions of this compact shall be liberally construed to effectuate the purposes of the compact. If this compact is held to be contrary to the constitution of any party state, the compact shall remain in effect as to the remaining states and in effect as to the state affected as to all severable matters. (Sept. 20, 1989, D.C. Law 8-30, § 2, 36 DCR 4744.)

Legislative history of Law 8-30. — See note to § 32-1041.

§ 32-1043. Agreements with other states.

An officer of the District that has the authority to place children and an official of a private agency licensed as a child placement agency by the District government pursuant to Chapter 10 of Title 32, is authorized to enter into an agreement with the appropriate officer or agency in another party state pursuant to subsection (b) of Article V of the compact. (Sept. 20, 1989, D.C. Law 8-30, § 4, 36 DCR 4744.)

Legislative history of Law 8-30. — See note to § 32-1041.

§ 32-1044. Delinquent children, administrative hearing, judicial review.

(a) If a child is adjudicated delinquent and committed to the custody of the District of Columbia Department of Human Services (“DHS”), pursuant to § 16-2320, and DHS, pursuant to Article VI of the Interstate Compact on the

Placement of Children ("Compact") places the child in another party jurisdiction, the rules issued pursuant to this section shall apply for purposes of meeting the requirements of Article VI of the compact.

(b) DHS shall afford an opportunity for an administrative hearing to the parents or legal guardian before placing a child. Subsequent to the hearing, the decision to make a placement upon request of the parent or guardian of the child may be reviewed at a court hearing in the Juvenile Branch of the Family Division of the Superior Court of the District of Columbia. The court hearing shall be held within 30 days after a request is made. The decision to place the child in an institution in another party state shall be upheld if the court finds that:

(1) Equivalent facilities for the child are not available within the jurisdiction of the District; and

(2) Institutional care in another state is in the best interest of the child and will not produce undue hardship.

(c) Except as provided in this section, the manner and standard of review by the Superior Court of the District of Columbia shall be as set forth in subtitle I of Chapter 15 of Title 1.

(d) A court review in accordance with this section shall not authorize the court to:

(1) Order DHS to pay for the care or treatment of a child who has not been committed to its custody;

(2) Order specific placement in another party state if the child has been committed to the custody of DHS;

(3) Review a decision by DHS to return a child to the District; or

(4) Set aside the placement decision of DHS, unless an abuse of discretion is found.

(e) This section shall not affect the authority of the court to order a specific placement. (Sept. 20, 1989, D.C. Law 8-30, § 5, 36 DCR 4744.)

Legislative history of Law 8-30. — See note to § 32-1041.

CHAPTER 11. INTERSTATE COMPACT ON JUVENILES.

Sec.

32-1101. Congressional findings and purposes.

32-1102. Authority to enter into and execute Compact.

32-1103. Appointment of Compact Administrator; administration of Compact and supplementary agreements.

Sec.

32-1104. Enforcement of Compact.

32-1105. Construction of Compact.

32-1106. Right to alter, amend, or repeal provisions.

§ 32-1101. Congressional findings and purposes.

(a) The Congress finds that:

(1) Juveniles who are not under proper supervision and control, or who have absconded, escaped, or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others; and

(2) The cooperation of the District of Columbia with the states is necessary to provide for the welfare and protection of juveniles and other persons in the District of Columbia.

(b) The Congress intends, in authorizing the District of Columbia to adopt the Interstate Compact on Juveniles, to have the District of Columbia cooperate fully with the states:

(1) In returning juveniles to those states requesting their returns; and

(2) In accepting and providing for the return of juveniles who are residents of the District of Columbia and who are found or apprehended in a state. (July 29, 1970, 84 Stat. 657, Pub. L. 91-358, title IV, § 401; 1973 Ed., § 32-1101.)

§ 32-1102. Authority to enter into and execute Compact.

(a) The Mayor of the District of Columbia (hereafter in this title referred to as the "Mayor") is authorized to enter into and execute on behalf of the District of Columbia a Compact with any state or states legally joining therein in the form substantially as follows:

THE INTERSTATE COMPACT ON JUVENILES.

The contracting states solemnly agree:

ARTICLE I. Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection

of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II. Existing Rights and Remedies.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III. Definitions.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of any agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV. Return of Runaways.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this

application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is

found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V. Return of Escapees and Absconders.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before

a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

ARTICLE VI. Voluntary Return Procedure.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad

litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII. Cooperative Supervision of Probationers and Parolees.

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the

identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII. Responsibility for Costs.

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Article IV(b), V(b) or VII(d) of this compact.

ARTICLE IX. Detention Practices.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X. Supplementary Agreements.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall: (1) provide the rates to be paid

for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI. Acceptance of Federal and Other Aid.

That any state party to this compact may accept any and all donations: gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII. Compact Administrators.

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII. Execution of Compact.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

ARTICLE XIV. Renunciation.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided

by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

ARTICLE XV. Severability.

(a) That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) The Mayor may enter into and execute on behalf of the District of Columbia the following additional articles to the Interstate Compact on Juveniles:

ARTICLE XVI. Additional Provision Relating to Return of Minor Children.

This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

For the purposes of this article, "child", as used herein, means any minor within the jurisdictional age limits of any court in the home state.

When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

ARTICLE XVII. Additional Provision Concerning Interstate Rendition of Juveniles Alleged to be Delinquent.

This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the

juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

(July 29, 1970, 84 Stat. 658, Pub. L. 91-358, title IV, § 402; 1973 Ed., § 32-1102.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Documents Act does not require Juvenile Compact to be published in the District's Municipal Regulations. In re O.M., App. D.C., 565 A.2d 573 (1989), cert. denied, 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953 (1990).

Power of Council to amend Compact. — There is a serious question whether the District Council has authority to amend the Juvenile Compact to restrict return of a juvenile to a state where he or she might be subject to the death penalty. In re O.M., App. D.C., 565 A.2d 573 (1989), cert. denied, 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953 (1990).

Identification and grant of Compact Administrator needed for proper rendition of juvenile by District. — District's consent to rendition of a juvenile to another state under the Interstate Compact on Juveniles cannot properly be exercised by Corporation Counsel or by trial judge absent express delegation of power. A remand is required to enable the trial court to identify the Compact Administrator

under the Compact and to solicit his grant or denial of the District's consent to rendition. In re G.C.S., App. D.C., 360 A.2d 498 (1976).

No discretion to refuse rendition. — The courts of the asylum state have no discretion under the Compact to refuse rendition simply because the juvenile may be subject to penalties in the demanding state which are not available in the asylum state. Even the chance that appellant may be subject to capital punishment does not alter this holding. In re O.M., App. D.C., 565 A.2d 573 (1989), cert. denied, 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953 (1990).

Proof of signatory status. — The published Mayor's offer is presumptive proof that the District is a signatory of the Interstate Compact on Juveniles. Since appellant failed to demonstrate that the District was not a member of the Compact, its participation in the Compact was sufficiently established. In re O.M., App. D.C., 565 A.2d 573 (1989), cert. denied, 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953 (1990).

Probable cause for extradition. — By its terms the Juvenile Compact does not require a probable cause determination for extradition. In re O.M., 117 WLR 1253 (Super. Ct. 1989).

Grant or denial of extradition request. — Asylum state does not have discretion to deny a demanding state's proper request for extradition on the grounds that the asylum state is morally opposed to the death penalty which may be imposed upon the defendant by the demanding state, or the asylum state believes that the defendant will not receive a fair trial in the demanding state. In re O.M., 117 WLR 1253 (Super. Ct. 1989).

§ 32-1103. Appointment of Compact Administrator; administration of Compact and supplementary agreements.

(a) The Mayor shall appoint or designate an officer of the government of the District of Columbia (hereinafter in this section referred to as the "Compact Administrator") to administer the Compact. The Compact Administrator shall serve at the pleasure of the Mayor.

(b) The Compact Administrator, acting jointly with like officers of party states, shall promulgate rules and regulations to carry out more effectively the terms of the Compact. The Compact Administrator shall cooperate with all departments, agencies, and officers of the government of the District of Columbia in facilitating the proper administration of the Compact or of any supplementary agreement entered into by the Compact Administrator under subsection (c) of this section.

(c) Subject to the approval of the Mayor, the Compact Administrator may enter into supplementary agreements with appropriate state officials for the purpose of administering the Compact.

(d) Subject to the approval of the Mayor, the Compact Administrator may make or arrange for any payments necessary to discharge any financial obligations imposed upon the District of Columbia by the Compact or by any supplementary agreement entered into under subsection (c) of this section. (July 29, 1970, 84 Stat. 665, Pub. L. 91-358, title IV, § 403; 1973 Ed., § 32-1103.)

Cross references. — As to jurisdiction of Family Division of Superior Court, see § 11-1101.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly,

and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Identification and grant of Compact Administrator needed for proper rendition of juvenile by District. — District's consent to rendition of a juvenile to another state under the Interstate Compact on Juveniles cannot properly be exercised by Corporation Counsel or by trial judge absent express delegation of power. A remand is required to enable the trial court to identify the Compact Administrator under the Compact and to solicit his grant or denial of the District's consent to rendition. In re G.C.S., App. D.C., 360 A.2d 498 (1976).

§ 32-1104. Enforcement of Compact.

The courts, departments, agencies, and officers of the District of Columbia shall enforce the Compact and shall take such action as may be necessary to carry out the purposes and intent of the Compact which may be within their respective jurisdictions. (July 29, 1970, 84 Stat. 666, Pub. L. 91-358, title IV, § 402; 1973 Ed., § 32-1104.)

Cited in In re O.M., App. D.C., 565 A.2d 573 (1989), cert. denied, 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953 (1990).

§ 32-1105. Construction of Compact.

The Compact shall not be construed to prohibit the adoption of any other plan or procedure for the District of Columbia for the return of any runaway juvenile. (July 29, 1970, 84 Stat. 666, Pub. L. 91-358, title IV, § 405; 1973 Ed., § 32-1105.)

§ 32-1106. **Right to alter, amend, or repeal provisions.**

The right to alter, amend, or repeal this title is expressly reserved by the Congress. (July 29, 1970, 84 Stat. 666, Pub. L. 91-358, title IV, § 406; 1973 Ed., § 32-1106.)

Power of Council to amend Compact. — There is a serious question whether the District Council has authority to amend the Juvenile Compact to restrict return of a juvenile to a state where he or she might be subject to the death penalty. In re O.M., App. D.C., 565 A.2d 573 (1989), cert. denied, 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953 (1990).

CHAPTER 12. MISCELLANEOUS PROVISIONS.

Sec.	Sec.
32-1201. Mayor to visit, investigate and report on certain charitable institutions.	32-1205. Compensation of physicians to the poor.
32-1202. Mayor authorized to visit, investigate and report on certain organizations.	32-1206. Conflicts of interest by directors or trustees of certain charitable institutions.
32-1203. Appropriations for charitable and reformatory institutions to be lien on property.	32-1207. Congressional policy as to appropriations to churches or religious entities.
32-1204. Terms of Congressmen as trustees or directors of certain corporations or institutions.	32-1208. Home for Aged and Infirm — Sale of surplus products.
	32-1209. Same — Admission of pay patients.

§ 32-1201. Mayor to visit, investigate and report on certain charitable institutions.

The Mayor of the District of Columbia is required to visit and investigate the management of all institutions of charity within the District which may be appropriated for out of the District revenues, in whole or in part, and shall require an itemized report of receipts and expenditures to be made to him, to be transmitted with his annual report to Congress, which report shall also include such recommendations as the Mayor may deem proper concerning the necessity for such institutions, together with a plan for their organization and management, and estimates of appropriations necessary for their maintenance. (July 5, 1884, 23 Stat. 127, ch. 227, § 1; 1973 Ed., § 32-1001.)

Cross references. — As to supervision by Board of Public Welfare over institutions supported by Congressional appropriations, see § 3-111.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-1202. Mayor authorized to visit, investigate and report on certain organizations.

The Mayor of the District of Columbia is authorized to visit, investigate the management of, and have a report of the receipts and expenditures of the Columbia Hospital for Women and Lying-in Asylum, the Children's Hospital, Saint Ann's Infant Asylum, National Association for Colored Women and Children, Women's Christian Association, Little Sisters of the Poor, and the German Orphan Asylum, so long as they respectively accept money appropriated by Congress for their aid. (June 4, 1880, 21 Stat. 157, ch. 121, § 1; 1973 Ed., § 32-1002.)

Cross references. — As to supervision by Board of Public Welfare over institutions supported by Congressional appropriations, see § 3-111.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-1203. Appropriations for charitable and reformatory institutions to be lien on property.

All sums of money appropriated and expended in aid of the purchase of real estate for charitable or reformatory institutions in the District of Columbia, or for buildings or for permanent improvements to buildings thereon, shall (subject to any trust deed, mortgage, or other security or encumbrance existing on such property at the time of its purchase, or created at the time of its purchase) be a lien upon such property, and in case of the dissolution of any such corporation owning such property, or in case of the disposal of such property, by such corporation, entitle the United States to reimbursement in proportion to any other contributions or funds used for such purposes; and the acceptance by any such corporation of any sum of money appropriated for the foregoing purposes shall be deemed an acceptance of and agreement to this provision. (Mar. 3, 1893, 27 Stat. 552, ch. 199, § 1; 1973 Ed., § 32-1003.)

Cross references. — As to sale of public lands, see § 9-401 et seq.

Section references. — This section is referred to in § 32-122.

§ 32-1204. Terms of Congressmen as trustees or directors of certain corporations or institutions.

In all cases where Members of Congress or Senators are appointed to represent Congress on any board of trustees or board of directors of any corporation or institution to which Congress makes any appropriation, the term of said Members or Senators, as such trustee or director, shall continue until the expiration of 2 months after the 1st meeting of the Congress chosen next after their appointment. (Mar. 3, 1893, 27 Stat. 553, ch. 199, § 1; 1973 Ed., § 32-1004.)

§ 32-1205. Compensation of physicians to the poor.

The compensation of the physicians to the poor shall not exceed \$40 per month each. (Feb. 25, 1885, 23 Stat. 314, ch. 145, § 1; 1973 Ed., § 32-1005.)

§ 32-1206. Conflicts of interest by directors or trustees of certain charitable institutions.

No member or members of any board or boards of trustees or directors of any charitable institution, organization or corporation in the District of Columbia, which is supported in whole or in part by appropriations made by Congress, shall engage in traffic with said institution, organization or corporation for financial gain, and any member or members of such board of trustees or directors who shall so engage in such traffic shall be deemed legally disqualified for service on said board or boards. (June 11, 1896, 29 Stat. 410, ch. 419, § 1; 1973 Ed., § 32-1007.)

Cross references. — As to members or employees of Board of Public Welfare not dealing with any institution under its control, inspection, or supervision for financial gain, see § 3-113.

§ 32-1207. Congressional policy as to appropriations to churches or religious entities.

It is hereby declared to be the policy of the government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; and no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control. (June 11, 1896, 29 Stat. 411, ch. 419, § 1; Mar. 3, 1897, 29 Stat. 683, ch. 387, § 1; 1973 Ed., § 32-1008.)

Appropriation for hospital not unconstitutional. — Appropriation for Providence Hospital, a secular corporation created by an act of Congress, was not unconstitutional as a law respecting the establishment of religion, although the members of the corporation belonged to 1 religious body. *Bradfield v. Roberts*, 175 U.S. 291, 20 S. Ct. 121, 44 L. Ed. 168 (1899).

§ 32-1208. Home for Aged and Infirm — Sale of surplus products.

The Mayor is authorized, under such regulations as the Council of the District of Columbia may prescribe, to sell the surplus products of the Home for the Aged and Infirm. All moneys derived from such sales shall be paid into the Treasury of the United States to the credit of the General Fund of the District of Columbia. (June 5, 1920, 41 Stat. 865, ch. 234, § 1; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 32-1009.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(256) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 32-1209. Same — Admission of pay patients.

Pay patients may be admitted to the Home for the Aged and Infirm for care and treatment at such rates and under such regulations as may be established by the Council of the District of Columbia, insofar as such admissions will not interfere with admission of indigent patients; provided, however, that the rates shall not exceed the estimated per capita cost for the current year. (June 14, 1950, 64 Stat. 212, ch. 235; 1973 Ed., § 32-1010.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(256) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 13. HEALTH-CARE AND COMMUNITY RESIDENCE FACILITY, HOSPICE AND HOME CARE LICENSURE.

Sec.

32-1301. Definitions.

32-1302. License requirements.

32-1303. Authority of Mayor.

32-1304. Rules.

32-1305. Inspections.

32-1306. Provisional and restricted licenses.

Sec.

32-1307. Standards for clinical privileges and staff membership; anticompetitive practices prohibited.

32-1308. Reporting to licensing authority.

32-1309. Penalties; enforcement.

§ 32-1301. Definitions.

(a) For the purposes of this act the term:

(1) "Hospital" means a facility that provides 24-hour inpatient care, including diagnostic, therapeutic, and other health-related services, for a variety of physical or mental conditions, and may in addition provide outpatient services, particularly emergency care.

(2) "Maternity center" means a facility or other place, other than a hospital or the mother's home, that provides antepartal, intrapartal, and postpartal care for both mother and child during and after normal, uncomplicated pregnancy.

(3) "Nursing home" means a 24-hour inpatient facility, or distinct part thereof, primarily engaged in providing professional nursing services, health-related services, and other supportive services needed by the patient/resident.

(4) "Community residence facility" means a facility that provides a sheltered living environment for individuals who desire or need such an environment because of their physical, mental, familial, social, or other circumstances, and who are not in the custody of the Department of Corrections. All residents of a community residence facility shall be 18 years of age or older, except that, in the case of group homes for mentally retarded persons, no minimum age shall apply, unless this requirement is waived in accordance with § 32-1305(e).

(5) "Group home for mentally retarded persons" means a community residence facility that provides a home-like environment for at least 4 but no more than 8 related or unrelated individuals who on account of mental retardation require specialized living arrangements, and maintains the necessary staff, programs, support services, and equipment for their care and habilitation.

(6) "Hospice" means an agency, organization, facility, or distinct part thereof, primarily engaged in providing a program of in-home, outpatient, or inpatient medical, nursing, counseling, bereavement, and other palliative and supportive services to terminally ill individuals and their families.

(7) "Home care agency" means an agency, organization, or distinct part thereof, other than a hospice, that provides, either directly or through a contractual arrangement, a program of health care, habilitative or rehabilitative therapy, personal care services, homemaker services, chore services, or other supportive services to sick or disabled individuals living at home or in a community residence facility. The term "home care agency" shall not be

construed to require the regulation and licensure of nonmedical services delivered by or through a religious organization on a small-scale, volunteer basis.

(8) "Ambulatory surgical facility" means any facility, other than a hospital or maternity center but including an office-based facility, at which there are performed outpatient surgical and related procedures that have been classified in accordance with § 32-1304(h) due to their complexity or the degree of patient risk.

(9) "Renal dialysis facility" means any place, other than a hospital or the patient's home, that provides therapeutic care for persons with acute or chronic renal failure through the use of hemodialysis, peritoneal dialysis, or any other therapy that clears the blood of substances normally excreted by the kidneys.

(b) The Mayor shall have the authority to define variant types of facilities and agencies reasonably classified within the broader categories defined in subsection (a) of this section, and may issue rules under § 32-1304 with respect to these subtypes. The Mayor shall make the final determination of whether a particular facility or agency falls within a category defined in subsection (a) of this section or a subtype defined by the Mayor pursuant to this subsection.

(c) When used throughout this act, the terms "facility" and "agency" and their plural forms shall, unless contextually inappropriate or subject to specific exception, apply to all of the facilities and agencies defined in subsection (a) of this section as well as those subtypes defined by the Mayor. The Mayor shall make the final determination of whether a provision is contextually inappropriate for a particular agency or facility. (Feb. 24, 1984, D.C. Law 5-48, § 2, 30 DCR 5778; Mar. 14, 1985, D.C. Law 5-154, § 2(a), 32 DCR 7; Sept. 5, 1985, D.C. Law 6-26, § 2(a), 32 DCR 3615; Feb. 28, 1987, D.C. Law 6-215, § 2(a), 34 DCR 893; July 8, 1988, D.C. Law 7-131, § 3, 35 DCR 4106; Mar. 16, 1989, D.C. Law 7-199, § 3, 36 DCR 3.)

Cross references. — As to Council's purposes in legislating mentally retarded citizens' rights, see § 6-1901.

As to report of adult abuse or neglect, see § 6-2503.

As to penalties and enforcement of adult protective services, see § 6-2512.

Section references. — This section is referred to in §§ 2-2805, 3-205.49, 6-312, 21-2202, 21-2209, 32-501, 32-1401, 47-1221, and 47-1241.

Legislative history of Law 5-48. — Law 5-48, "Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983," was introduced in Council and assigned Bill No. 5-166, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and trans-

mitted to both Houses of Congress for its review.

Legislative history of Law 5-154. — Law 5-154 was introduced in Council and assigned Bill No. 5-555, and was retained by the Council. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-219 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-26. — Law 6-26 was introduced in Council and assigned Bill No. 6-142, which was referred to the Committee on Consumer and Regulatory Affairs and reassigned to the Committee on Human Services. The Bill was adopted on first and second readings on May 28, 1985, and June 11, 1985, respectively. Signed by the Mayor on June 13, 1985, it was assigned Act No. 6-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-215. — Law 6-215 was introduced in Council and assigned Bill No. 6-538, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-275 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-131. — Law 7-131 was introduced in Council and assigned Bill No. 7-469. The Bill was adopted on first and second readings on April 19, 1988 and May 3, 1988, respectively. Signed by the Mayor on May 19, 1988, it was assigned Act No. 7-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-199. — Law 7-199 was introduced in Council and assigned Bill No. 7-473, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on December 21,

1988, it was assigned Act No. 7-264 and transmitted to both Houses of Congress for its review.

References in text. — “This act,” referred to in the introductory language of subsection (a) and in the first sentence of subsection (c), is D.C. Law 5-48.

Applicability. — Section 32-1401 et seq. only applies to a transfer to another “facility” or a relocation of a resident within a “facility.” A “facility” is a defined term which means a nursing home or community resident facility operating in the District. It does not necessarily apply to a transfer of a resident to a hospital. *Baugh v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 611 A.2d 557 (1992).

Word “discharge” does not encompass a short-term, temporary transfer of a resident to a hospital for medical care with every expectation of a prompt return to the facility, at least where the stay is less than 15 days. *Baugh v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, App. D.C., 611 A.2d 557 (1992).

§ 32-1302. License requirements.

(a) Except as provided in subsections (b), (c), and (d) of this section, it shall be unlawful to operate a facility or agency in the District of Columbia, whether public or private, for profit or not for profit, without being licensed by the Mayor.

(b) This chapter shall not apply to a facility or agency operated by the federal government or, except in the case of community residence facilities, by and for the adherents of a church or religious denomination that, in accordance with established tenets, recognizes spiritual healing as the sole means of treating illness.

(c) Facilities and agencies that, prior to February 24, 1984, were not or would not have been subject to licensure in the District of Columbia may operate without a license until 6 months after the adoption of applicable rules under § 32-1304.

(d) The continued operation of a facility or agency pending action by the Mayor on an application for licensure renewal or initial licensure under subsection (c) of this section shall not be deemed unlawful if a completed application was timely filed but, through no fault of the facility or agency or its governing body, staff, or employees, the Mayor has failed to act on the application before the expiration of the facility’s or agency’s current license or, under subsection (c) of this section, its authorized period of operation. A facility or agency operating under this subsection shall comply with all other provisions of this chapter and rules adopted pursuant to this chapter.

(e) Application forms shall list all certificates of approval, authority, occupancy, or need that are required as a precondition to lawful operation in the District of Columbia.

(f) A license shall be valid only for the premises stated on the license.

(g) Any change in the ownership of a facility or agency owned by an individual, partnership, or association, or in the legal or beneficial ownership of 10% or more of the stock of a corporation that owns or operates a facility or agency, shall be subject to written notice of the change being given to the governmental licensing authority at least 30 days prior to the change in ownership. Upon notification, the governmental licensing authority may, at its discretion, require reinspection and relicensure to ensure that the facility or agency will remain in compliance with the provisions of this chapter, rules adopted pursuant to this chapter, and all other applicable provisions of law.

(h) Unless sooner terminated or renewed, a license required by this chapter shall expire one year from the date of issue or the last renewal.

(i) Each facility licensed under this chapter shall post its license in a conspicuous place on the premises, and each agency licensed under this chapter shall have its license readily available for inspection by the public. (Feb. 24, 1984, D.C. Law 5-48, § 3, 30 DCR 5778.)

Cross references. — As to establishment of D.C. General Hospital Commission, see § 32-211.

Legislative history of Law 5-48. — See note to § 32-1301.

Section references. — This section is referred to in § 32-1304.

§ 32-1303. Authority of Mayor.

(a) The Mayor shall:

(1) Ensure that licensing rules are consistent with certificate of need rules and that both are designed to facilitate the goals and objectives of the District of Columbia's state health plan and certificate of need program; and

(2) Conduct an initial inventory of facilities to determine actual physical bed capacity and operating bed capacity.

(b) The Mayor shall have the authority to license bed capacity by specific, well-defined services. For hospitals, licensure by type of service shall be limited to the following categories: medical/surgical; ICU/coronary care; OB/GYN; nursery; intermediate neonatal and neonatal intensive care; pediatrics; alcoholism/chemical dependency; rehabilitation; and psychiatric. (Feb. 24, 1984, D.C. Law 5-48, § 4, 30 DCR 5778.)

Cross references. — As to purpose of certificate of need for health institution, see § 32-301.

Legislative history of Law 5-48. — See note to § 32-1301.

Delegation of authority under Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983. — See Mayor's Order 84-105, June 19, 1984.

§ 32-1304. Rules.

(a) The Mayor shall issue rules, consistent with other provisions of this chapter and pursuant to subchapter I of Chapter 15 of Title 1, establishing:

(1) License fees for private facilities and agencies reasonably calculated to reflect a facility's or agency's respective share of the cost of administering the provisions of this chapter and rules adopted pursuant to this chapter;

(2) Procedures deemed necessary to effectuate the purposes of this chapter, including, but not limited to, procedures for:

(A) Issuing and renewing licenses;

(B) Obtaining variances;

(C) Ensuring that 6 months after the adoption of applicable rules under this subsection, licensure of all affected facilities and agencies shall be under the new rules;

(D) Waiving the inspection requirements of § 32-1305(a) and (b) for those agencies that deliver services within the District of Columbia but are headquartered and licensed outside the District of Columbia, when, in the opinion of the Mayor, licensure by another jurisdiction constitutes sufficient evidence that the agency is in substantial compliance with District of Columbia law;

(E) Processing and following up on complaints by facility and agency staff, consumers, and advocates that are filed with the governmental licensing authority;

(F) Suspending or revoking the license of a facility or agency that is in violation of any provision of this chapter, rule adopted pursuant to this chapter, or other provision of District of Columbia or federal law, or whose governing body, chief executive officer, administrator, or director has made a material misrepresentation of fact to a government official with respect to the facility's or agency's compliance with any provision of this chapter, rule adopted pursuant to this chapter, or other provision of District of Columbia or federal law; and

(G) Appealing from adverse licensure decisions;

(3) Standards for the construction and operation of each type of facility and agency, including (where appropriate), but not limited to, standards governing the following: Safety and sanitation of facilities; organizational governance and administration; employee and volunteer training, staff membership and delineation of clinical privileges (in addition to the standards set forth in § 32-1307), and other personnel matters; diagnostic, therapeutic, emergency, anesthesia, laboratory, pharmaceutical, dietary, nursing, rehabilitation, social, and other services; infection control; patient/client/resident care and quality assurance; recordkeeping; utilization review; and internal complaint and appeal procedures; and

(4) A statement of patients'/clients'/residents' rights and responsibilities for each type of facility and agency.

(b) Repealed.

(c) In formulating the standards and statements of rights and responsibilities required by subsection (a)(3) and (4) of this section, the Mayor shall, within 30 days after February 24, 1984, appoint an advisory task force for each type of facility and agency except ambulatory surgical facilities and renal dialysis facilities. Each task force shall be composed of consumers, providers, advocates, and government agency representatives, and shall be charged with the responsibility of making formal written recommendations within a time frame established by the Mayor. The Mayor shall give substantial consideration to each task force's recommendations and shall, on a continuing basis

before adoption of proposed rules, maintain a dialogue with each task force while reviewing and acting on its recommendations.

(d) Where appropriate, standards adopted under subsection (a)(3) of this section may incorporate, in whole or in part, the standards of private accrediting bodies and standard-setting organizations, as well as the federal conditions of participation and standards for health-insurance and medical-assistance programs. Whenever the standards of a private accrediting body or standard-setting organization are revised and a copy is submitted to the Mayor, the Mayor shall evaluate the revised standards and determine whether any or all of them should be incorporated into new rules.

(e) Community residence facilities shall distribute a copy of the statement required by subsection (a)(4) of this section to each resident's parents, guardian, or other responsible person acting on his or her behalf. All other facilities shall conspicuously post copies of this statement near the main entrance and on every floor. Agencies shall distribute a copy of this statement to each patient/client upon the initial delivery of services. Each copy shall specifically state, in boldface, the address and telephone number of the appropriate in-house or intra-agency personnel and governmental authority to which complaints should be addressed.

(f) In setting standards under subsection (a)(3) of this section, the Mayor shall require that hospice and home care agency programs be centrally administered and organized to ensure effective coordination of all patient/client care services.

(g) Nothing in this section shall be construed to prohibit a facility or agency from supplementing the standards adopted under subsection (a)(3) of this section by establishing internal standards, policies, and procedures that promote safety and quality care, so long as they are reasonable and not inconsistent with this chapter, rules adopted pursuant to this chapter, or other District of Columbia law.

(h) For ambulatory surgical facilities, the rules required by subsection (a) of this section shall include a list of those outpatient surgical procedures that, if not performed in a hospital or, when appropriate, a maternity center, may be performed only in a facility licensed as an ambulatory surgical facility. In formulating this list of procedures before its publication as a proposed rule, the Mayor shall solicit input from a broad range of health professionals, relevant institutional providers, and other members of the public who are knowledgeable about ambulatory surgery or ambulatory surgical facilities. This list shall be periodically reviewed and updated by rulemaking pursuant to subchapter I of Chapter 15 of Title 1.

(i)(1) As part of the standards for hospitals and renal dialysis facilities required by subsection (a)(3) of this section, the Mayor shall establish standards and procedures with respect to:

(A) The labeling, handling, transporting, storage, routine inspection, and preventive maintenance of dialysis equipment;

(B) The reprocessing and reuse of hemodialyzers, dialysate port caps, and blood port caps;

(C) Water purification and quality;

(D) The flushing of residues from potentially toxic sterilants and disinfectants used during manufacture or reprocessing;

(E) The facility's responsibility to ensure individualized treatment, including the most appropriate choice of equipment for each patient and, for patients exhibiting hypersensitivity, the use of biocompatible membranes;

(F) The reporting of equipment failures and occurrences of pyrexia, sepsis, or bacteremia;

(G) The training, minimum qualifications, and supervision of dialysis staff; and

(H) The training and support provided to self-dialysis and home dialysis patients.

(2) The standards and procedures required by paragraph (1) of this subsection shall not be less stringent than the guidelines set forth in the July 28, 1986, Recommended Practice for Reuse of Hemodialyzers published by the Association for the Advancement of Medical Instrumentation ("AAMI Recommended Practice") and the recommendations of the Centers for Disease Control referenced in those guidelines ("CDC Recommendations").

(3) Until the standards and procedures required by paragraph (1) of this subsection become enforceable through licensure, hospitals and renal dialysis facilities shall comply with the AAMI Recommended Practice, except that, where there are CDC Recommendations, hospitals and renal dialysis facilities shall comply with the CDC Recommendations.

(4) No hospital or renal dialysis facility shall reuse blood tubing or transducer protectors.

(5) No hospital or renal dialysis facility shall reuse a hemodialyzer or dialyzer caps on a patient unless that patient has first signed a written consent form after having been orally advised by a physician of the potential risks, benefits, and uncertainties surrounding reuse and the disinfection process. The advising physician shall not be a medical director of the facility or dialysis unit, nor shall he or she have a financial interest in the facility. The information conveyed shall consist of a full and fair presentation of representative opinions from those in the medical community who have expressed concerns about reuse practices, and those who support these practices. Any discussion of "first-use syndrome" shall include information about advances in biocompatible-membrane technology.

(6) Dialysis patients shall have the following nonwaivable rights, to be supplemented by the statement of rights and responsibilities established by the Mayor pursuant to subsection (a)(4) of this section:

(A) To revoke or limit, either orally or in writing, a previously executed reuse consent at any time and for any reason;

(B) To be informed before each dialysis treatment of the number of times the dialyzer and dialyzer caps have been previously used;

(C) To have documented in their patient-care records all consents to reuse, refusals to consent, revocations of consent, and limitations placed upon consent;

(D) To have unrestricted access to their patient-care records;

(E) To make the reuse-content decision in an environment devoid of threats, intimidation, or retaliation by the facility or its staff; and

(F) Except as provided by paragraph (7) of this subsection, to remain at a facility and receive treatments with a new, state-of-the-art dialyzer and new dialyzer caps whenever consent to reuse is refused or revoked or reuse is prohibited by limitations placed upon consent.

(7) A hospital or renal dialysis facility may transfer or decline to admit a patient on account of that patient's refusal to consent to the reuse of hemodialyzers or dialyzer caps only if:

(A) The Mayor certifies that the facility is currently in full compliance with this subsection and all other District of Columbia laws that regulate, either directly or indirectly, the reprocessing and reuse of hemodialyzers and dialyzer caps;

(B) The facility, in cooperation with a patient-care ombudsman designated by the Mayor, identifies and secures a permanent placement for the patient in an alternative facility within the District of Columbia where that patient will be provided the option of receiving each treatment with a new, state-of-the-art dialyzer and new dialyzer caps; and

(C) The patient-care ombudsman designated by the Mayor finds that the patient can obtain equally reliable transportation to and from the alternative facility without suffering extreme physical, psychological, or financial hardship.

(8) Paragraphs (3) through (7) of this subsection shall be applicable and enforceable with respect to all hospitals and renal dialysis facilities, whether licensed or temporarily exempt from licensure under § 32-1302(c), immediately on February 28, 1987.

(j) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (Feb. 24, 1984, D.C. Law 5-48, § 5, 30 DCR 5778; Sept. 5, 1985, D.C. Law 6-26, § 2(b)-(d), 32 DCR 3615; Feb. 28, 1987, D.C. Law 6-215, § 2(b), (c), 34 DCR 893; Oct. 1, 1992, D.C. Law 9-168, § 2(a), (b), 39 DCR 5822.)

Section references. — This section is referred to in §§ 2-3306.3, 32-1301, 32-1302, 32-1305 to 32-1307, 32-1309, 32-1412, 32-1451, and 32-1453.

Legislative history of Law 5-48. — See note to § 32-1301.

Legislative history of Law 6-26. — See note to § 32-1301.

Legislative history of Law 6-215. — See note to § 32-1301.

Legislative history of Law 9-122. — Law 9-122 was introduced in Council and assigned Bill No. 9-417, which was retained by Council. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-196 and trans-

mitted to both Houses of Congress for its review. D.C. Law 9-122 became effective on June 11, 1992.

Legislative history of Law 9-168. — Law 9-168 was introduced in Council and assigned Bill No. 9-418, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-266 and transmitted to both Houses of Congress for its review. D.C. Law 9-168 became effective on October 1, 1992.

References in text. — "This act," referred to throughout subsections (a) and (g), is D.C. Law 5-48.

Delegation of authority under Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983. — See Mayor's Order 84-105, June 19, 1984.

Delegation of authority pursuant to Law

6-26. — See Mayor's Order 86-46, March 20, 1986.

Delegation of authority pursuant to Law 6-215. — See Mayor's Order 87-146, June 19, 1987.

§ 32-1305. Inspections.

(a) To ensure that each new facility and agency will be in compliance with the provisions of this chapter, rules adopted pursuant to this chapter, and all other applicable laws and rules, the Mayor shall conduct an on-site inspection prior to a facility's or agency's initial licensure. Instead of issuing a full-year license to a new facility or agency, the Mayor may issue a provisional license under § 32-1306 pending satisfactory completion of additional, follow-up inspections.

(b) After initial licensure the Mayor shall conduct an on-site inspection as a precondition to licensure renewal, except that the Mayor may accept accreditation by a private accrediting body, federal certification for participation in a health-insurance or medical assistance program, or federal qualification of a health maintenance organization as evidence of, and in lieu of inspecting for, compliance with any or all of the provisions of this chapter and rules adopted pursuant to this chapter that incorporate or are substantially similar to applicable standards or conditions of participation established by that body or the federal government. Acceptance of private accreditation by the Mayor shall be contingent on the facility's or agency's:

(1) Notifying the Mayor of all survey and resurvey dates no later than 5 days after it receives notice of these dates;

(2) Permitting authorized government officials to accompany the survey team; and

(3) Submitting to the Mayor a copy of the certificate of accreditation, all survey findings, recommendations, and reports, plans of correction, interim self-survey reports, notices of noncompliance, progress reports on correction of noncompliances, preliminary decisions to deny or limit accreditation, and all other similar documents relevant to the accreditation process, no later than 5 days after their receipt by the facility or agency or submission to the accrediting body.

(c) An authorized government official may enter the premises of a facility or agency during operating hours for the purpose of conducting an announced or unannounced inspection to check for compliance with any provision of this chapter, rule adopted pursuant to this chapter, or other provision of District of Columbia law. In conducting an inspection, the official shall make every effort not to disrupt the normal operations of the facility or agency and its staff.

(d)(1) If a facility or agency loses private accreditation or federal certification, it shall give the Mayor written notice of the loss within 5 calendar days. If in such a case accreditation or certification was accepted in lieu of an inspection under subsection (b) of this section, the Mayor shall immediately upon notification:

(A) Convert the facility's or agency's license to a provisional or restricted license under § 32-1306 pending satisfactory completion of an inspection conducted by the Mayor; or

(B) Suspend the facility's or agency's license based upon a finding that loss of accreditation or certification was prompted by existing deficiencies that constitute an immediate or serious and continuing danger to the health, safety, or welfare of its patients/clients/residents.

(2) The Mayor may, prior to a hearing, suspend the license of any facility or agency or convert its license to a provisional or restricted license if he or she determines that existing deficiencies constitute an immediate or serious and continuing danger to the health, safety, or welfare of its patients/clients/residents.

(3) Upon the suspension or conversion of a license pursuant to this subsection, the Mayor shall immediately give the facility or agency written notice of the action, including a copy of the order of suspension or conversion, a statement of the grounds for the action, and notification that the facility or agency has 7 days (excluding Saturdays, Sundays, and legal holidays) from the day written notice is received to request an expedited, preliminary review hearing. If the facility or agency fails to communicate, either orally or in writing, a timely request for a preliminary review hearing, the order of suspension or conversion shall remain in effect until terminated by the Mayor or an unexpedited hearing is held pursuant to procedures adopted under § 32-1304. Upon receipt of a timely request for an expedited, preliminary review hearing, the Mayor shall within 72 hours (excluding Saturdays, Sundays, and legal holidays) provide a hearing to review the reasonableness of the suspension or conversion order. At this hearing, the Mayor shall have the burden of establishing a prima facie case of immediate or serious and continuing endangerment. The suspension or conversion order shall be either affirmed or vacated at the hearing. In the event an order is affirmed, it shall, unless extended, remain in effect for no longer than 30 calendar days, during which time a final hearing shall be scheduled to consider the appropriateness of revocation or continuing restrictions on licensure. Before expiration of a suspension or conversion order, an extension may be granted for a period not to exceed an additional 30 calendar days upon agreement of all the parties or for good cause shown.

(e) The Mayor shall have the authority, upon a showing of undue hardship and if not inconsistent with other provisions of this chapter or deleterious to the public health and safety, to grant variances with respect to the standards to be established under § 32-1304(a)(3). The Mayor shall maintain a public record listing all variances granted under this subsection and containing a complete written explanation of the basis for each variance. (Feb. 24, 1984, D.C. Law 5-48, § 6, 30 DCR 5778; Sept. 5, 1985, D.C. Law 6-26, § 2(e), (f), 32 DCR 3615.)

Section references. — This section is referred to in §§ 32-1301, 32-1304, and 32-1306.

Legislative history of Law 5-48. — See note to § 32-1301.

Legislative history of Law 5-154. — See note to § 32-1301.

Legislative history of Law 6-26. — See note to § 32-1301.

§ 32-1306. Provisional and restricted licenses.

(a) As an alternative to denial, nonrenewal, suspension, or revocation of a license when a facility or agency has numerous deficiencies or a serious single deficiency with respect to the standards to be established under § 32-1304(a)(3), the Mayor may:

(1) Issue a provisional license if the facility or agency is taking appropriate ameliorative action in accordance with a mutually agreed upon timetable; or

(2) Issue a restricted license that prohibits the facility or agency from accepting new patients/clients/residents or delivering certain specified services that it would otherwise be authorized to deliver, if appropriate ameliorative action is not forthcoming.

(b) As provided in § 32-1305(a), provisional licenses may be issued to new facilities and agencies in order to afford the Mayor sufficient time and evidence to evaluate whether a new facility or agency is capable of complying with the provisions of this chapter, rules adopted pursuant to this chapter, and other applicable provisions of law.

(c) Provisional licenses may be granted for a period not exceeding 90 days, and may be renewed no more than once. (Feb. 24, 1984, D.C. Law 5-48, § 7, 30 DCR 5778.)

Section references. — This section is referred to in § 32-1305.

Legislative history of Law 5-48. — See note to § 32-1301.

§ 32-1307. Standards for clinical privileges and staff membership; anticompetitive practices prohibited.

(a) The accordence and delineation of clinical privileges shall be determined on an individual basis and commensurate with an applicant's education, training, experience, and demonstrated current competence. In implementing these criteria, each facility and agency shall formulate and apply reasonable, nondiscriminatory standards for the evaluation of an applicant's credentials. As part of its overall responsibility for the operation of a facility or agency, the governing body, or designated persons so functioning, shall ensure that decisions on clinical privileges and staff membership are based on an objective evaluation of an applicant's credentials, free of anticompetitive intent or purpose. Whenever possible, the credentials committee and other staff who evaluate and determine the qualifications of applicants for clinical privileges and staff membership shall include members of the applicant's profession.

(b) The following are not valid factors for consideration in the determination of qualifications for staff membership or clinical privileges:

(1) An applicant's membership or lack of membership in a professional society or association;

(2) An applicant's decision to advertise, lower fees, or engage in other competitive acts intended to solicit business;

(3) An applicant's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services on other than a fee-for-service basis;

(4) An applicant's support for, training of, or participation in a private group practice with members of a particular class of health professional;

(5) An applicant's practices with respect to testifying in malpractice suits, disciplinary actions, or any other type of proceeding; and

(6) An applicant's willingness to send a certain amount of patients/clients who are in need of the services of a facility or agency to a particular facility or agency; provided, that this last restriction shall not apply to public facilities and agencies.

Each facility or agency shall formulate procedures to ensure that the foregoing factors play no part when decisions regarding clinical privileges and staff membership are made. In any action brought by an individual against a facility or agency regarding a determination of clinical privileges or staff membership, the facility or agency shall have the burden of proving that none of these considerations were a factor in the determination.

(c) No provision of District of Columbia law, institutional or staff bylaw of a facility or agency, rule or regulation, or practice shall prohibit qualified advanced practice registered nurses, podiatrists, or psychologists from being accorded clinical privileges and appointed to all categories of staff membership at those facilities and agencies that offer the kinds of services that can be performed by either members of these health professions or physicians.

(d) General and family practitioners who have demonstrated a current competence in the performance of particular services or procedures shall not be discriminated against with respect to staff membership or the accordance and delineation of clinical privileges on account of their type of practice.

(e) If a facility or agency offers the types of services that can be performed by physician assistants or other, analogous health professional assistants, it shall establish clearly defined and objective procedures for the processing and evaluation of requests by members of these groups to provide such services at the facility or agency.

(f) Whenever a health professional submits a completed application for staff membership or clinical privileges to a facility or agency, that facility or agency shall have 120 calendar days to grant or deny the application. No facility or agency may deny such an application, terminate, or reduce the rights and responsibilities attending the staff membership of a health professional, or reduce, suspend, revoke, or refuse to renew his or her clinical privileges, without providing him or her with the following minimum procedural protections:

(1) A contemporaneous written explanation containing the explicit reasons for taking the action;

(2) Reasonable advance notice of the right to a fair hearing which would afford the applicant an opportunity to adequately prepare a rebuttal to the stated reasons for the action;

(3) A fair hearing, including the right to present evidence and call witnesses in his or her behalf;

(4) The right to have retained counsel present at the hearing if the facility or agency is represented by counsel at the hearing;

(5) A written decision containing the explicit reasons for taking the action and substantially based on the evidence produced at the hearing; and

(6) Access to a complete record documenting all preliminary and final decisions and proceedings related to the decisions. (Feb. 24, 1984, D.C. Law 5-48, § 8, 30 DCR 5778; Mar. 14, 1985, D.C. Law 5-159, § 6, 32 DCR 30; Dec. 3, 1985, D.C. Law 6-66, § 11, 32 DCR 6086; Mar. 23, 1995, D.C. Law 10-247, § 5, 42 DCR 457.)

Section references. — This section is referred to in §§ 2-3306.3 and 32-1304.

Effect of amendments. — D.C. (Act 10-394) rewrote (c).

Legislative history of Law 5-48. — See note to § 32-1301.

Legislative history of Law 6-66. — Law 6-66 was introduced in Council and assigned Bill No. 6-135, which was referred to the Committee on Education and reassigned to the Committee on Human Services. The Bill was adopted on first and second readings on September 10, 1985, and September 24, 1985, respectively. Signed by the Mayor on October 9, 1985, it was assigned Act No. 6-89 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-247. — Law 10-247, the "Health Occupations Revision Act of 1985 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-598, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 1, 1994, respectively.

Vetoed by the Mayor on December 28, 1994, Council overrode the veto on January 17, 1995, and the Bill was assigned Act No. 10-394 and transmitted to both Houses of Congress for its

review. D.C. Law 10-247 became effective March 23, 1995.

Failure to comply with provisions of subsection (f). — Where physician submitted an informal application and did not submit a completed application for certain types of surgery, his failure to comply with subsection (f) prevented him from taking advantage of its protection, even if hospital's failure to comply with subsection (f) of this section gave rise to an action for damages. *Canady v. Providence Hosp.*, 942 F. Supp. 11 (D.D.C. 1996).

Return to full membership upon expiration of monitoring and supervision agreement. — The expiration of plaintiff physician's monitoring and supervision agreement with the defendant hospital could not be said to trigger subsection (f) of this section; when plaintiff's monitoring and supervision agreement expired, plaintiff returned to full and unencumbered membership privilege status. *Johnson v. Greater S.E. Community Hosp. Corp.*, 903 F. Supp. 140 (D.D.C. 1995).

Cited in *Balkissoon v. Capitol Hill Hosp.*, App. D.C., 558 A.2d 304 (1989); *Johnson v. Greater S.E. Community Hosp. Corp.*, 951 F.2d 1268 (D.C. Cir. 1991); *Canady v. Providence Hosp.*, 903 F. Supp. 125 (D.D.C. 1995).

§ 32-1308. Reporting to licensing authority.

(a) Except as provided in subsection (b) of this section, in the event that a health professional's: (1) Clinical privileges are reduced, suspended, revoked, or not renewed; or (2) employment or staff membership is involuntarily terminated or restricted for reasons of, or voluntarily terminated or restricted while involuntary action is being contemplated for reasons of, professional incompetence, mental or physical impairment, or unprofessional or unethical conduct, a facility or agency shall submit a written report detailing the facts of the case to the duly constituted governmental board, commission, or other authority, if one exists, responsible for licensing that health professional.

(b) The reporting requirement in subsection (a) of this section shall not apply to a temporary suspension or relinquishment of privileges or responsibilities if a health professional enters and successfully completes a prescribed program of education or rehabilitation. As soon as there exists no reasonable expectation that he or she will enter and successfully complete such a prescribed program, the facility or agency shall submit a report forthwith pursuant to subsection (a) of this section. (Feb. 24, 1984, D.C. Law 5-48, § 9, 30 DCR 5778.)

Legislative history of Law 5-48. — See note to § 32-1301.

§ 32-1309. Penalties; enforcement.

(a) Any executive officer, administrator, director, or member of the governing body of a facility or agency who willfully and knowingly participates in the unlawful operation of that facility or agency in the District of Columbia, and any person who intentionally impedes a District of Columbia official or employee in the performance of his or her authorized duties under this act or any rule issued pursuant to this act, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not exceeding \$1,000 per day of violation, imprisonment for not more than 90 days, or both. Prosecution shall be in the Superior Court of the District of Columbia by information signed by the Corporation Counsel or one of his or her assistants.

(b) Notwithstanding the availability of any other remedy, the Corporation Counsel or one of his or her assistants may maintain, in the name of the District of Columbia, an action in the Superior Court of the District of Columbia to enjoin any person, agency, corporation, or other entity from operating a facility or agency in violation of the terms of its license, provisions of this chapter, or any rule issued pursuant to this chapter.

(c) Notwithstanding the availability of any other remedy, an individual who is aggrieved by a violation of any provision of this chapter or rule issued pursuant to this chapter may maintain an action in the Superior Court of the District of Columbia to enjoin the continuation of that violation or the commission of any future violation.

(d)(1) Any person who knowingly gives an owner, licensee, administrator, or employee of a facility or agency, whether directly or indirectly, advance notice of an officially unannounced inspection or investigation to be conducted by the Mayor, the Long-Term Care Ombudsman designated pursuant to 42 U.S.C. § 3027(a)(12), or their designees, shall be:

(A) Guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$5,000, imprisonment for not more than 90 days, or both; and

(B) If a District government employee, subject to disciplinary and other remedial action in accordance with District law.

(2) Prosecution under paragraph (1)(A) of this subsection shall be in the Superior Court of the District of Columbia by information signed by the Corporation Counsel or one of his or her assistants.

(e)(1) Civil fines, penalties, and related costs may be imposed against a facility or agency, whether public or private, for the violation of any provision of this chapter, rule issued pursuant to this chapter (including residents' rights established pursuant to § 32-1304(a)(4)), or other District of Columbia or locally enforceable federal law. Except as provided in paragraphs (2) through (4) of this subsection, procedures for adjudication and enforcement and applicable fines, penalties, and costs shall be those established by or pursuant to subchapters I through III of Chapter 27 of Title 6. Governmental immunity shall not be a defense to any civil fine, penalty, or cost imposed.

(2) Whenever the respondent in proceedings for a civil fine or penalty is the licensee or administrator of a nursing home or community residence

facility, the Long-Term Care Ombudsman shall have the right to intervene as a party in any hearing, administrative appeal, or court review that is a part of those proceedings. As a party to the proceedings, the Long-Term Care Ombudsman shall be served with a copy of the notice of infraction, all hearing notices, all orders of the hearing examiner, any notices of appeal, and any orders of the District of Columbia Board of Appeals and Review or a court.

(3) Civil fines, penalties, and related costs imposed against a nursing home or community residence facility shall not come out of the funds needed to provide quality care and services to residents. To monitor compliance with this paragraph, the Mayor shall conduct an audit at least annually of every nursing home and community residence facility against which civil fines, penalties, or costs have been imposed. Civil fines, penalties, and costs imposed against any nursing home or community residence facility owned by the District of Columbia shall be paid into either the special fund or account if established pursuant to § 32-1419, or a special account to be used for the personal needs of residents.

(4) Notwithstanding the availability of other means of enforcement, the Mayor may directly deduct the amount of civil fines, penalties, and related costs imposed against any facility or agency from amounts otherwise payable by the District of Columbia to the licensee or administrator of that facility or agency. (Feb. 24, 1984, D.C. Law 5-48, § 10, 30 DCR 5778; Apr. 18, 1986, D.C. Law 6-108, § 502, 33 DCR 1510; Feb. 28, 1987, D.C. Law 6-215, § 2(d), 34 DCR 893.)

Legislative history of Law 5-48. — See note to § 32-1301.

Legislative history of Law 6-108. — Law 6-108 was introduced in Council and assigned Bill No. 6-256, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 28, 1986, and February 11, 1986, respec-

tively. Signed by the Mayor on February 24, 1986, it was assigned Act No. 6-138 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-215. — See note to § 32-1301.

Cited in *Balkissoon v. Capitol Hill Hosp.*, App. D.C., 558 A.2d 304 (1989).

CHAPTER 14. NURSING HOMES AND COMMUNITY RESIDENCE FACILITIES PROTECTIONS.

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Subchapter I. Definitions.

§ 32-1401. Definitions.

For the purposes of this chapter, the term:

(1) "Administrator" means the person who is responsible for the day-to-day operation and management of a facility, including, in the case of a community residence facility, the Residence Director of the facility.

(2) "Affiliate" means:

(A) With respect to a partnership, each partner;

(B) With respect to a corporation, each officer and director and each stockholder who directly or indirectly owns or controls 10% or more of any class of securities issued by the corporation; and

(C) With respect to an individual:

(i) Each parent, child, grandchild, spouse, sibling, first cousin, aunt, and uncle of the individual, whether the relationship arises by blood, marriage, or adoption;

(ii) Each partnership in which the individual or an affiliate of the individual is a partner, and each other partner in that partnership; and

(iii) Each corporation in which the individual or an affiliate of the individual is an officer, director, or stockholder who directly or indirectly owns or controls 10% or more of any class of securities issued by the corporation.

(3) "Community residence facility" means that term as it is defined in § 32-1301(a)(4).

(4) "Court" means the Superior Court of the District of Columbia.

(5) "District" means the District of Columbia.

(6) "Facility" means a nursing home or community residence facility operating in the District.

(7) "Long-Term Care Ombudsman" means the person designated under 42 U.S.C. § 3027(a)(12) to perform the mandated functions of the Long-Term Care Ombudsman program in the District.

(8) "Nursing home" means that term as it is defined in § 32-1301(a)(3).

(9) "Person" means an individual or individuals, an agency, a corporation, a partnership, the District government, or any other organizational entity.

(10) "Resident" means a resident of a facility.

(11) "Resident's representative" means:

(A) Any person who is knowledgeable about a resident's circumstances and has been designated by that resident to represent him or her;

(B) Any person other than a facility who has been appointed by a court either to administer a resident's financial or personal affairs or to protect and advocate for a resident's rights; or

(C) The Long-Term Care Ombudsman or his or her designee, if no person has been designated or appointed in accordance with subparagraphs (A) and (B) of this paragraph. (Apr. 18, 1986, D.C. Law 6-108, § 101, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(a), 36 DCR 534.)

Legislative history of Law 6-108. — Law 6-108, the "Nursing Home and Community Residence Facility Residents' Protections Act of 1985," was introduced in Council and assigned Bill No. 6-256, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 28, 1986, and February 11, 1986, respectively. Signed by the Mayor on February 24, 1986, it was assigned Act No. 6-138 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-218. — Law 7-218 was introduced in Council and assigned Bill No. 7-334, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-293 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 6-108. — See Mayor's Order 87-47, February 17, 1987.

Applicability. — Section 32-1401 et seq. only applies to a transfer to another "facility" or a relocation of a resident within a "facility." A "facility" is a defined term which means a nursing home or community resident facility operating in the District. It does not necessarily apply to a transfer of a resident to a hospital. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 611 A.2d 557 (1992).

Word "discharge" does not encompass a short-term, temporary transfer of a resident to a hospital for medical care with every expectation of a prompt return to the facility, at least where the stay is less than 15 days. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 611 A.2d 557 (1992).

Subchapter II. Receiverships.

§ 32-1411. Purpose of receivership.

The purpose of a receivership authorized under this subchapter shall be to safeguard the health, safety, and welfare of a facility's residents when seriously endangered, to ensure their continuity of care, to safeguard their rights as

recognized by District and federal law, and to protect them from the increased stress and risk of trauma often associated with abrupt or unplanned transfer and discharge. A receiver appointed under this subchapter shall not take any actions or assume any responsibilities inconsistent with this purpose. Nothing in this subchapter shall be construed to limit or abrogate any other common-law or statutory right to petition for receivership. (Apr. 18, 1986, D.C. Law 6-108, § 201, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1412. Grounds for receivership.

A receiver may be appointed under this subchapter on one or more of the following grounds:

- (1) The facility is unlawfully operating without a current District license;
- (2) The licensee has abandoned the facility;
- (3) The facility is closing within 30 calendar days and cannot offer verifiable evidence that adequate arrangements, designed to minimize transfer trauma, have been made to relocate its residents;
- (4) A condition or practice in the facility poses a serious, widespread danger, either immediate or recurring, to the health, safety, or welfare of the residents;
- (5) Violations of residents' rights, established pursuant to § 32-1304(a)(4), are chronic, substantial, and widespread; or
- (6) Insolvency of an owner or the licensee has placed the continued operation of the facility in serious jeopardy. (Apr. 18, 1986, D.C. Law 6-108, § 202, 33 DCR 1510.)

Section references. — This section is referred to in §§ 32-1413, 32-1415, and 32-1420.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1413. Petitions for receivership.

(a) Notwithstanding the availability of any other remedy, the Corporation Counsel may, in the name of the District and based on one or more of the grounds listed in § 32-1412, petition the court to appoint a receiver for any facility.

(b) Notwithstanding the availability of any other remedy, a resident, a resident's representative, the Long-Term Care Ombudsman, or any other advocate representing the interests of a facility's residents may, based on one or more of the grounds listed in § 32-1412(2) through (6), submit a written request asking the Corporation Counsel to petition the court to appoint a receiver for any facility. If the Corporation counsel denies the request or does not file a petition within 5 days (excluding Saturdays, Sundays, and legal holidays) after receiving a request, the requestor may file with the court a petition for the appointment of a receiver.

(c) The licensee of any facility may, based on one or more of the grounds listed in § 32-1412, petition the court to appoint a voluntary receiver for that facility. (Apr. 18, 1986, D.C. Law 6-108, § 203, 33 DCR 1510.)

Section references. — This section is referred to in §§ 32-1414, 32-1415, 32-1417, and 32-1420.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1414. Notice and hearing requirements; ex parte appointment.

(a)(1) The court shall hold a hearing on a petition filed under § 32-1413 within 10 days (excluding Saturdays, Sundays, and legal holidays) after it is filed.

(2) The petitioner (if he or she is not the licensee) shall ensure that the licensee or administrator of the facility is served with notice of the hearing date and a copy of the petition:

(A) In accordance with court rules, at least 5 days (excluding Saturdays, Sundays, and legal holidays) before the hearing; or

(B) By a notice conspicuously posted inside or on the front door of the facility at least 3 days (excluding Saturdays, Sundays, and legal holidays) before the hearing, if the petitioner files with the court a sworn statement setting forth in detail his or her diligent but unsuccessful efforts to find the licensee or administrator and serve process.

(3) Upon filing a petition with the court, a petitioner other than the District shall serve notice of the hearing date and a copy of the petition on the Corporation Counsel. No later than 5 days (excluding Saturdays, Sundays, and legal holidays) after receiving a copy of the petition, the Corporation Counsel shall, to the extent allowable under federal law, make available to the petitioner for his or her use in the proceedings certified copies of all licensure and Medicare/Medicaid certification reports within the custody of the District government that document conditions in the facility within the previous 2 years.

(b)(1) The court may appoint a receiver immediately upon the filing of a petition under § 32-1413 if it finds probable cause to believe a condition or practice in a facility poses an immediate danger of death or life-threatening injury to the residents.

(2) In the event of an ex parte appointment under paragraph (1) of this subsection, the petitioner (if he or she is not the licensee) shall ensure that the licensee or administrator of the facility is served with notice of the hearing date and copies of the petition, any supporting affidavit(s), and the order of appointment:

(A) By personal service within 24 hours after the appointment; or

(B) By a notice conspicuously posted inside or on the front door of the facility within 48 hours after the appointment, if the petitioner files with the court a sworn statement setting forth in detail his or her diligent but unsuccessful efforts to find the licensee or administrator and serve process. (Apr. 18, 1986, D.C. Law 6-108, § 204, 33 DCR 1510.)

Section references. — This section is referred to in § 32-1420.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1415. Appointment of receiver; continuation of ex parte appointment.

(a) After a hearing the court may appoint a receiver for the facility or continue the appointment of a receiver made ex parte if it finds that the petitioner has proven, by clear and convincing evidence, the existence of one or more of the grounds for receivership listed in § 32-1412.

(b)(1) The Mayor shall, after consulting with appropriate District government agencies, the Long-Term Care Ombudsman, and representatives from nursing home and community residence facility providers, establish a list of potential receivers with experience in the delivery of health-care services, preferably in the operation of a nursing home or community residence facility.

(2) Except as provided in paragraph (3) of this subsection, the court may appoint as a receiver any qualified person with experience in the delivery of health-care services, preferably in the operation of a nursing home or community residence facility. In deciding whom to appoint, the court shall give strong consideration to the list of mayoral nominees established pursuant to paragraph (1) of this subsection.

(3) The court shall not appoint as a receiver:

(A) An employee of a District government agency that licenses, operates, or provides a financial payment to the type of facility being placed in receivership;

(B) The owner, licensee, or administrator of the facility, or an affiliate of the owner, licensee, or administrator; or

(C) A parent, child, grandchild, spouse, sibling, first cousin, aunt, or uncle of one of the facility's residents, whether the relationship arises by blood, marriage, or adoption.

(c)(1) Before a receiver takes charge of a facility, he or she shall file a bond with the court that:

(A) Does not exceed the value of the facility and its assets; and

(B) Runs to the District for the benefit of all persons interested in his or her faithful performance of the receivership.

(2) Unless the court directs otherwise, the receiver may pay the premium of the bond from the facility's income.

(d) Any person authorized to file a petition under § 32-1413 may petition the court to appoint a substitute for a receiver who:

(1) Dies;

(2) Has or develops a disability that impedes his or her ability to carry out the receivership;

(3) Has or develops a conflict of interest; or

(4) Fails to make reasonable progress in carrying out the receivership. (Apr. 18, 1986, D.C. Law 6-108, § 205, 33 DCR 1510.)

Section references. — This section is referred to in §§ 32-1417 and 32-1420.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1416. Powers and duties of receiver.

(a) A receiver shall:

(1) Take charge of the operation and management of the facility and assume all rights to possess and use the building, fixtures, furnishings, records, and other related property and goods that the owner, licensee, or administrator would have if the receiver had not been appointed;

(2) Give notice of the receivership, in accordance with subsection (b) of this section, to the facility's residents and employees, each resident's representative, the Long-Term Care Ombudsman, and any other person whom the court orders should receive notice;

(3) Exercise his or her powers to correct all of the conditions that prompted the need for receivership, to ensure quality care for each resident, and to promote full respect for the rights of residents established by District and federal law;

(4) Unless the facility is closing, take all steps necessary to maintain or restore District licensure and federal Medicare/Medicaid certification;

(5) Preserve all property and records with which he or she is entrusted;

(6) Report to the court in accordance with a schedule established by the court; and

(7) Carry out any other duties established by the court.

(b) The notice required by subsection (a)(2) of this section shall include at a minimum the following information in not less than 12-point type:

(1) The reasons for and purpose of the receivership;

(2) The identity of the receiver and how he or she may be contacted;

(3) The anticipated duration of the receivership; and

(4) Unless the receiver was appointed to facilitate the orderly transfer or discharge of residents, a statement in boldface making clear to the residents that they do not have to move.

(c) Except as otherwise provided by Chapter 19 of Title 6, whenever a resident is to be discharged, transferred, or relocated, a receiver shall:

(1) Comply with subchapter III of this chapter;

(2) Explain to the resident and resident's representative the alternative placements that are available, help them find an appropriate alternative placement, and provide them with information about the alternative placement chosen;

(3) Transport the resident to the alternative placement chosen; and

(4) Transfer all property of and records pertaining to the resident, including all necessary health information, to the resident, resident's representative, or appropriate authority at the alternative placement.

(d) A receiver may:

(1) Use in a reasonable and prudent manner all private and third-party payments to the facility, including payments made under Medicare or Medicaid and, with the approval of the court, money from the special fund or account if established under § 32-1419;

(2) Enter into contracts and hire agents, consultants, and employees to carry out the powers and duties established by this section;

(3) Direct, manage, and discharge employees of the facility, subject to District law and any contract rights they may have; and

(4) Exercise any other powers authorized by the court.

(e) If the structural, architectural, or environmental conditions of a facility violate District or federal law or otherwise endanger the health, safety, or welfare of the residents, the receiver may correct the violation:

(1) Without the consent of the court, if the cost of the correction does not exceed \$5,000; or

(2) Upon court approval of a written estimate and plan of correction, if the cost of the correction exceeds \$5,000.

(f)(1) Except as provided in paragraphs (2) through (6) of this subsection, a receiver shall honor all leases, mortgages, secured transactions, and other contracts related to the facility and its operation.

(2) A receiver shall assume all rights to enforce or avoid the terms of a lease, mortgage, secured transaction, or other contract related to the facility and its operation that the owner, licensee, or administrator would have if the receiver had not been appointed.

(3) A receiver shall not be required to honor a lease, mortgage, secured transaction, or other contract related to the facility and its operation if the obligee is, or at the time the obligation was created was, the licensee or administrator of the facility or an affiliate of the licensee or administrator.

(4) A receiver may petition the court to allow him or her to wholly or partially avoid the terms of a lease, mortgage, secured transaction, or other contract that the licensee or administrator of the facility entered into if those terms provide for a rent, interest rate, or other payment substantially in excess of an amount that was reasonable at the time the contract was entered into, or if performance of the contract would substantially impede the receiver's ability to carry out the purposes of the receivership.

(5)(A) The court shall hold a hearing on a petition filed under paragraph (4) of this subsection within 15 days (excluding Saturdays, Sundays, and legal holidays) after it is filed.

(B) The receiver shall ensure that, at least 10 days (excluding Saturdays, Sundays, and legal holidays) before the hearing, notice of the hearing date and a copy of the petition are served in accordance with court rules on all persons whose legal or beneficial interest in the contract at issue is ascertainable with reasonable diligence.

(6) If the court finds that the receiver has proven the averments in the petition by clear and convincing evidence, it may, for the duration of the receivership, excuse performance of the contract or adjust the rent, interest rate, or other payment under the contract to an amount that was reasonable at the time the contract was entered into.

(7) Compliance with a court order issued under paragraph (6) of this subsection shall be a defense to any action brought against a receiver alleging breach of contract. The receiver's compliance with a court order, however, shall not relieve the licensee or administrator of the facility of his or her liability for the difference between the amount paid by the receiver and the amount originally due under the contract.

(g) A receiver shall be personally liable only for his or her acts of gross negligence or intentional wrongdoing in carrying out the receivership.

(h) A receiver shall be entitled to a reasonable fee established by the court to be paid from the revenues of the facility. (Apr. 18, 1986, D.C. Law 6-108, § 206, 33 DCR 1510.)

Section references. — This section is referred to in § 32-1417.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1417. Termination of receivership.

(a) Except as provided in subsection (b) of this section, a receivership shall terminate when:

(1) The person who will assume control of the facility has been granted a current license by the Mayor and:

(A) The time period specified in the order appointing the receiver elapses and is not extended; or

(B) The court determines the receivership is no longer necessary because the grounds on which it was based no longer exist; or

(2) The facility is closing and all of its residents have been transferred or discharged.

(b)(1) Notwithstanding subsection (a) of this section, a receivership of a private facility shall not be terminated in favor of any person who was the licensee or administrator at the time a petition was filed under § 32-1413, or, in the discretion of the court, any person who is or was an affiliate of the licensee or administrator, unless he or she first:

(A) Reimburses the District government for any increase in Medicaid expenditures needed to finance the receiver's bond premium under § 32-1415(c)(2), to pay the receiver's fee under § 32-1416(h), or to correct deficiencies caused by the licensee's or administrator's own negligence; and

(B) Reimburses the District government for any amount it loaned the receiver for major repairs or improvements to the facility, or assumes an obligation to repay the loan and provides collateral or other assurance of payment deemed sufficient by the Mayor.

(2) The court may in addition require that, before a person specified in paragraph (1) of this subsection resumes control of a facility, he or she post bond in an amount it deems appropriate as security against future noncompliance with the law. If the receivership is not reinstated under subsection (c) of this section, the bond money shall be returned.

(c) Should it appear that, within 2 years after a receivership is terminated in favor of a person specified in subsection (b)(1) of this section, that person is not maintaining the facility in substantial compliance with all applicable laws, and should the court so find after granting notice and a hearing to all parties to the earlier receivership proceeding, the previous order appointing a receiver may be reinstated. A receiver thus reappointed may use all or part of any bond posted pursuant to subsection (b)(2) of this section to remedy the deficiencies. (Apr. 18, 1986, D.C. Law 6-108, § 207, 33 DCR 1510.)

Section references. — This section is referred to in § 32-1420.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1418. Final accounting.

Within 30 calendar days after termination of a receivership, the receiver shall give the court a complete accounting of all property with which he or she has been entrusted, all funds collected, and all expenses incurred. (Apr. 18, 1986, D.C. Law 6-108, § 208, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1419. Special fund or account.

(a) The Mayor may establish a special revolving fund or a separate allocable revenue account in the General Fund to provide financial support in the form of loans to a receiver of a facility. If established, this fund or account may be supported in accordance with subsection (f) of this section.

(b) For the purposes of this section, the term “fund” means the special revolving fund or separate allocable revenue account referred to in subsection (a) of this section.

(c) If expenses remain unpaid after a receiver uses all private and third-party payments, the receiver may petition the court for money from the fund. Before the court authorizes use of money from the fund, it shall hold a hearing at which the Mayor, the receiver, the licensee, the owner, and the administrator of the facility may offer evidence on whether the court should approve the loan. Notice of the hearing shall be given to the Mayor, the receiver, the licensee, the owner, and the administrator of the facility at least 7 days (excluding Saturdays, Sundays, and legal holidays) before the hearing.

(d)(1) A loan from the fund shall create an automatic lien on the facility and its assets in the amount of the loan. The receiver shall file with the Mayor a document setting forth:

(A) The amount of the loan;

(B) The name of the facility to which the lien attaches; and

(C) A description of the assets of the facility that are affected by the lien.

(2) A lien created under this subsection shall:

(A) Extend to the property of the facility described in the document filed under paragraph (1) of this subsection and to the beneficial interest in that property possessed by the owner; and

(B) Have priority over any other lien or interest that attaches after the filing date, except as otherwise provided by federal law.

(e) In addition to receivership loans, the Mayor may use money from the fund for low-interest loans or grants to facilities to help improve resident care, address the personal needs of residents, and enhance resident safety.

(f) The Mayor may support the fund with money received from:

(1) The collection of civil fines, penalties, and related costs imposed against a facility;

(2) The sale of properties subject to liens created by this section;

(3) The assessment of facility licensure fees; and

(4) The repayment of loans made under this section.

(g) Any money in the fund in excess of \$500,000 shall revert to the General Fund. (Apr. 18, 1986, D.C. Law 6-108, § 209, 33 DCR 1510.)

Section references. — This section is referred to in §§ 32-1309 and 32-1416.

Legislative history of Law 6-108. — See note to § 32-1401.

Delegation of authority pursuant to Law 6-108. — See Mayor's Order 87-47, February 17, 1987.

§ 32-1420. Appointment of court monitor.

(a) Any person authorized to file a petition for receivership may, based on one or more of the grounds listed in § 32-1412, petition the court for the appointment of a monitor. In addition, in lieu of appointing a receiver when a petition for receivership has been filed, the court may, on either its own motion or the motion of a party, appoint a monitor instead. The grounds and procedures set forth in §§ 32-1412 to 32-1415, except for the requirement of a bond in § 32-1415(c), shall apply to the appointment of a monitor. The appointment of a monitor may be terminated by the court for any of the reasons listed in § 32-1417(a) or if the court determines that a receiver should be appointed.

(b) A monitor appointed under this section shall observe the operation of the facility, advise the facility on how to comply with District and federal law, and report periodically to the court. In each report to the court, the monitor shall make a recommendation on whether a receiver should be appointed for the facility.

(c) Whenever a person requests the Corporation Counsel to petition for the appointment of a receiver under § 32-1413(b) and the Corporation Counsel instead petitions the court for the appointment of a monitor, the request shall be considered denied and the requestor may petition the court for the appointment of a receiver. (Apr. 18, 1986, D.C. Law 6-108, § 210, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

Subchapter III. Discharge, Transfer, and Relocation of Residents.

§ 32-1431. Grounds for involuntary discharge, transfer, or relocation by facility.

(a) Unless a resident and his or her representative consent otherwise, a facility may discharge the resident, transfer the resident to another facility, or relocate the resident from one part or room of the facility to another only:

(1) If essential to meet that resident's documented health-care needs or to be in accordance with his or her prescribed level of care;

(2) If essential to safeguard that resident or one or more other residents from physical or emotional injury;

(3) On account of nonpayment for his or her maintenance, except as prohibited by subsection (b) of this section and 42 U.S.C. § 1395 et seq. and 42 U.S.C. § 1396 et seq.;

(4) If essential to meet the facility's reasonable administrative needs and no practicable alternative is available; or

(5) If the facility is closing or officially reducing its licensed capacity.

(b) No facility that is a District Medicaid provider may discharge, transfer, or relocate a resident on account of his or her conversion from private-pay or Medicare to Medicaid status, or on account of a temporary hospitalization if payment or reimbursement for his or her bed continues to be made available. (Apr. 18, 1986, D.C. Law 6-108, § 301, 33 DCR 1510.)

Section references. — This section is referred to in § 32-1433.

Legislative history of Law 6-108. — See note to § 32-1401.

Level of care distinctions unlawful. — Because the federal statutory scheme is so pervasive that it pre-empts any local regulation of Medicare or Medicaid eligible nursing facilities based on level of care distinctions, because Congress specifically prohibited in clear statutory language the types of transfers and discharges now occurring under the defendants' scheme, because the Health Care Financing Administration's advisory letter to the defen-

dants clearly indicated that residents were eligible for the same level of "skilled care", and because the recommendations of the defendants' own Administrative Law Judges have been that the defendants' scheme violate federal law, transfers and discharges under the defendants' nursing home licensing and regulatory scheme made as a result of level of care distinctions were deemed unlawful under federal law. *Newman v. Kelly*, 848 F. Supp. 228 (D.D.C. 1994).

Cited in *Henson v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 560 A.2d 543 (1989).

§ 32-1432. Notice to resident and resident's representative.

(a) Whenever a resident is to be discharged, transferred, or relocated, a facility representative shall give that resident and his or her representative both oral and written notice of the reasons for, procedures for contesting, and proposed effective date of the discharge, transfer, or relocation. Except as provided in subsection (b) of this section or unless the resident and his or her representative consent to shorter notice, the oral and written notice shall be given at least 21 calendar days before a proposed discharge or transfer from the facility, and at least 7 calendar days before a proposed relocation within the facility.

(b) The time requirements for advance oral and written notice set forth in subsection (a) of this section shall not apply if:

(1) A more immediate discharge, transfer, or relocation is necessitated by the resident's urgent medical needs as explicitly delineated in the signed, written orders of an attending physician; or

(2) The Long-Term Care Ombudsman determines that emergency or other compelling circumstances necessitate a more immediate discharge, transfer, or relocation, and the basis for that determination is documented in the clinical records of those discharged, transferred, or relocated.

(c) Consent by a resident and his or her representative to a discharge, transfer, relocation, or abbreviated notice under this subchapter shall be valid only if knowingly and voluntarily given at the time the move is proposed.

(d) The written notice required by subsection (a) of this section shall be on a form prescribed by the Mayor and shall at a minimum contain:

(1) The specific reason(s), stated in detail and not in conclusory language, for the proposed discharge, transfer, or relocation;

(2) The proposed effective date of the discharge, transfer, or relocation;

(3) A statement in not less than 12-point type that reads:

“You have a right to challenge this facility’s decision to discharge, transfer, or relocate you. If the decision is to discharge you from the facility or to transfer you to another facility and you think you should not have to leave, you or your representative have 7 days from the day you receive this notice to inform the Administrator [Residence Director, if a community residence facility] or a member of the staff that you are requesting a hearing and to complete the enclosed hearing request form and mail it in the preaddressed envelope provided. If you are mailing the hearing request form from the facility, the day you place it in the facility’s outgoing mail or give it to a member of the staff for mailing shall be considered the date of mailing for purposes of the time limit. In all other cases, the postmark date shall be considered the date of mailing. If, instead, the decision is to relocate you within the facility and you think you should not have to move to another room, you or your representative have only 5 days to do the above.

“If you or your representative request a hearing, it will be held no later than 5 days after the request is received in the mail, and, in the absence of emergency or other compelling circumstances, you will not be moved before a hearing decision is rendered. If the decision is against you, in the absence of an emergency or other compelling circumstances you will have at least 5 days to prepare for your move if you are being discharge or transferred to another facility, and at least 3 days to prepare for your move if you are being relocated to another room within the facility.

“To help you in your move, you will be offered counseling services by the staff, assistance by the District government if you are being discharged or transferred from the facility, and, at your request, additional support from the Long-Term Care Ombudsman program. If you have any questions at all, please do not hesitate to call one of the phone numbers listed below for assistance.”;

(4) A hearing request form, together with a postage paid envelope preaddressed to the appropriate District official or agency;

(5) The name, address, and telephone number of the person charged with the responsibility of supervising the discharge, transfer, or relocation; and

(6) The names, addresses, and telephone numbers of the Long-Term Care Ombudsman program and local legal services organizations.

(e) Copies of the written notice required by subsection (a) of this section shall be placed in the resident’s clinical record and shall be transmitted to the Mayor’s designee and, if the resident’s care is paid in whole or in part through Medicaid, the Director of the Department of Human Services (“DHS”), and the Long-Term Care Ombudsman.

(f) Whenever nonpayment is the ground for a proposed involuntary discharge or transfer, the resident shall have the right to redeem up to the time that the discharge or transfer is to be effected and, if full payment is made, shall have the right to remain in the facility. (Apr. 18, 1986, D.C. Law 6-108, § 302, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(b), 36 DCR 534.)

Section references. — This section is referred to in §§ 32-1433 and 32-1434.

Legislative history of Law 7-218. — See note to § 32-1401.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1433. Hearing.

(a)(1) Whenever a facility decides to involuntarily discharge, transfer, or relocate a resident, that resident, his or her representative, or the Long-Term Care Ombudsman may contest the decision by mailing a written hearing request to the Mayor and notifying the administrator or facility staff of the request:

(A) Within 7 calendar days after receiving notice of a proposed discharge or transfer to another facility; or

(B) Within 5 calendar days after receiving notice of a proposed relocation within the facility.

(2) If the resident or resident's representative mails the hearing request from the facility, the day he or she places it in the facility's outgoing mail or gives it to a member of the facility staff for mailing shall be considered the date of mailing for purposes of the 7-day and 5-day time limits. In all other cases, the postmark date shall be considered the date of mailing.

(3) A timely hearing request shall stay the discharge, transfer, or relocation unless a condition set forth in § 32-1432(b)(1) and (2) develops in the interim.

(b) The Mayor shall hold a hearing at the resident's facility within 5 calendar days, and shall render a decision within 7 calendar days, after a timely hearing request is received. The facility shall have the burden of proof unless the ground for the proposed discharge, transfer, or relocation is a prescribed change in the resident's level of care, in which case the person(s) responsible for prescribing that change shall have the burden of proof and the resident shall have the right to challenge the level of care determination at the hearing. A hearing held under this section may not be used by the resident to litigate or relitigate Medicaid eligibility.

(c) If the Mayor finds that the existence of a ground listed in § 32-1431(a) has been proven by clear and convincing evidence, the resident shall not be:

(1) Discharged or transferred from the facility before the 22nd calendar day following his or her receipt of the notice required by § 32-1432(a) or the 5th calendar day following his or her notification of the hearing decision, whichever is later, unless a condition set forth in § 32-1432(b)(1) and (2) develops in the interim; or

(2) Relocated within the facility before the 8th calendar day following his or her receipt of the notice required by § 32-1432(a) or the 3rd calendar day following his or her notification of the hearing decision, whichever is later,

unless a condition set forth in § 32-1432(b)(1) and (2) develops in the interim. (Apr. 18, 1986, D.C. Law 6-108, § 303, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(c), 36 DCR 534.)

Section references. — This section is referred to in § 32-1434.

Legislative history of Law 6-108. — See note to § 32-1401.

Legislative history of Law 7-218. — See note to § 32-1401.

Delegation of authority pursuant to D.C. Law 6-108. — See Mayor's Order 86-129, August 8, 1986.

Delegation of authority pursuant to D.C. Law 6-108, "Nursing Home and Community Residence Facility Residents' Protection Act of 1985." — See Mayor's Order 88-230, October 19, 1988.

Sufficiency of evidence. — Court could not uphold agency's determination that the burden of proving that a discharge was necessary was met by the existence of the medical certification forms where there was present in the record an unexplained letter much to the opposite effect by the same individual who signed the forms relied upon and where the forms themselves contained internally contradictory and ambiguous elements, since such evidence did not rise to the level of "clear and convincing" as mandated by subsection (c). *Henson v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 560 A.2d 543 (1989).

§ 32-1434. Discussion and counseling.

Before a resident is voluntarily or involuntarily discharged, transferred to another facility, or relocated within a facility, a facility representative shall discuss the reasons for the move with the resident and his or her representative and shall answer any questions they must have about the move or the written notice they received pursuant to § 32-1432(a). The contents of this discussion shall be summarized in writing, include the names of the individuals involved in the discussion, and be made a part of the resident's clinical record. In addition, the facility representative shall strongly recommend and offer to provide counseling services to the resident and his or her representative before the move. If the resident has requested a hearing pursuant to § 32-1433(a), facility staff shall attempt to prepare the resident for the possibility of having to move on 3-day (for an intra-facility relocation) or 5-day (for a discharge or transfer to another facility) notice should the hearing decision not be in his or her favor. (Apr. 18, 1986, D.C. Law 6-108, § 304, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1435. Grounds for transfer or discharge by Mayor.

(a) The Mayor may transfer or discharge any resident from any facility on 1 or more of the following grounds:

(1) The facility is unlawfully operating without a current District license, or is operating in violation of restrictions placed on its license;

(2) The Mayor has suspended, revoked, or refused to renew the facility's license;

(3) The facility is closing or intends to close and adequate arrangements for the relocation of its residents, in a manner designed to keep transfer trauma to a minimum, have not been made at least 30 calendar days before the anticipated closure date;

(4) The facility has requested the Mayor's assistance in the transfer or discharge, and the Mayor determines that the resident and his or her representative have consented to the transfer or discharge; or

(5) The Mayor has determined that an emergency exists which poses an immediate danger of death or serious physical injury to the resident.

(b) In deciding whether to transfer or discharge a resident under this section, the Mayor shall consider the likelihood of serious harm that may result if the resident remains in the facility and the availability of other remedies besides transfer or discharge. (Apr. 18, 1986, D.C. Law 6-108, § 305, 33 DCR 1510.)

Section references. — This section is referred to in §§ 32-1436, 32-1437, 32-1438, and 32-1439.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1436. Notice to facility owner or administrator; informal conference.

(a) Before a resident is transferred or discharged under § 32-1435(a)(1) through (3), the Mayor shall provide the licensee or administrator of the facility with a written notice stating the reasons for the intended action and informing the licensee or administrator of his or her right to an informal conference and a subsequent hearing. The licensee or administrator may contest a nonemergency transfer or discharge by submitting to the Mayor a written request for an informal conference within 4 days (excluding Saturdays, Sundays, and legal holidays) after he or she receives notice of the proposed transfer or discharge. A timely request for an informal conference shall stay the nonemergency transfer or discharge pending the Mayor's decision after the conference.

(b) The Mayor shall hold an informal conference within 4 days (excluding Saturdays, Sundays, and legal holidays) after a timely request for the conference is received. Following the conference, the Mayor shall affirm, modify, or reverse his or her previous decision to transfer or discharge the resident. (Apr. 18, 1986, D.C. Law 6-108, § 306, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1437. Notice to resident and resident's representative; informal conference.

(a) Before a resident is transferred or discharged under § 32-1435(a)(1) through (4), the Mayor shall provide the resident, the representative of a resident, and the Long-Term Care Ombudsman with a written notice stating the reasons for the intended action and informing them of their right to contest the transfer or discharge under § 32-1439.

(b) Before the transfer or discharge, the Mayor shall hold an informal conference with the resident, the representative of a resident, and the Long-Term Care Ombudsman at which they may present objections to the

proposed transfer or discharge plan and alternative placement. (Apr. 18, 1986, D.C. Law 6-108, § 307, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(d), 36 DCR 534.)

Legislative history of Law 6-108. — See note to § 32-1401.

Legislative history of Law 7-218. — See note to § 32-1401.

§ 32-1438. Emergency transfer or discharge by Mayor.

(a) Whenever the immediate transfer or discharge of 1 or more residents is required by an emergency pursuant to § 32-1435(a)(5), the Mayor shall notify the licensee or administrator of the facility and any resident(s) to be removed that an emergency has been found to exist and that removal is ordered. In addition, whenever practicable the Mayor shall involve the resident(s) in the removal planning.

(b) Following emergency removal, the Mayor shall provide the licensee or administrator of the facility, each resident removed, and each removed resident's representative with a written notice stating the basis for the finding of an emergency and informing them of their right to contest the removal under § 32-1439. (Apr. 18, 1986, D.C. Law 6-108, § 308, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1439. Hearing to review Mayor's decision to transfer or discharge.

(a) Within 10 calendar days after a transfer or discharge by the Mayor, the licensee or administrator of the facility, any resident transferred or discharged, and the representative of any resident transferred or discharged may contest the transfer or discharge by submitting to the Mayor a written request for a hearing. The Mayor shall hold a hearing and render a decision within 30 calendar days after a timely hearing request is received. When a hearing request is submitted by a resident, the hearing shall be held at a location convenient to the resident.

(b) A resident who is transferred or discharged from a facility by the Mayor under § 32-1435 shall be liable to that facility only for the costs of his or her maintenance incurred before the transfer or discharge.

(c) If as a result of a hearing held under this section a resident is to be returned to a facility, the Mayor shall facilitate that return if the licensee or administrator of the facility, resident, or resident's representative requests assistance. (Apr. 18, 1986, D.C. Law 6-108, § 309, 33 DCR 1510.)

Section references. — This section is referred to in §§ 32-1437 and 32-1438.

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1440. Transfer and discharge planning and assistance.

(a)(1) The Mayor shall offer planning and assistance, including information on available alternative placements, to residents who are being voluntarily or involuntarily transferred or discharged from their facilities pursuant to this subchapter. Residents shall be involved in planning their transfer or discharge and shall choose among available alternative placements, except that, when an emergency makes prior resident involvement impracticable, the Mayor may make a temporary placement until a final placement can be arranged. Except when an attending physician determines that it is medically contraindicated or if the need for immediate transfer or discharge requires otherwise, a resident shall be allowed at least 2 visits to a proposed alternative placement before his or her transfer or discharge.

(2) Whenever practicable, residents may choose their final alternative placement. No resident shall be forced to remain in a particular temporary or permanent placement, and, whenever placement alternatives are being compared by either the facility or the Mayor, strong consideration shall be given to the proximity of a resident's relatives and friends.

(b) The Mayor shall develop a model resident transfer and discharge plan to ensure the safe and orderly removal of residents and to protect their health, safety, welfare, and rights. This plan shall be developed in consultation with appropriate District government agencies, consumers, advocates, and the Long-Term Care Ombudsman. The plan shall conform to the requirements of subsection (a) of this section and shall be followed whenever a resident is transferred or discharged unless alterations in the plan are necessary to meet the individual needs of a particular resident. In addition, the plan shall delineate the facility's responsibilities in both individual and group transfers and discharges. Each facility shall periodically train its staff in transfer and discharge planning in accordance with the plan developed under this subsection.

(c) To facilitate implementation of the resident transfer and discharge plan developed pursuant to subsection (b) of this section, the Mayor may place a relocation team in any facility from which residents are to be transferred or discharged. (Apr. 18, 1986, D.C. Law 6-108, § 310, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1441. Notice of adverse action or voluntary facility closure.

(a) Whenever a facility receives written notice that its license is being restricted, suspended, revoked, or not renewed or that it is losing its Medicare or Medicaid certification, the licensee or administrator shall within 30 calendar days give written notice of this fact to the residents and employees of the facility, the residents' representatives, and the Long-Term Care Ombudsman.

(b) To the extent possible, the licensee or administrator of a facility shall give the Mayor, any resident to be transferred or discharged, the representative of any resident to be transferred or discharged, the facility's employees, and the Long-Term Care Ombudsman advance written notice of at least 90 calendar days before he or she voluntarily closes the facility or a part of the facility that, when closed, will require the transfer or discharge of more than 10% of the residents. This notice shall include the proposed date of and reasons for closing.

(c) Before all or part of a facility is voluntarily closed under subsection (b) of this section, a facility representative shall advise those residents to be transferred or discharged and their representatives of available alternative placements and shall offer to assist them in securing a placement. Until the date of closing, the facility shall fully comply with this chapter and all other applicable laws and rules. (Apr. 18, 1986, D.C. Law 6-108, § 311, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

Applicability. — Section 32-1401 et seq. only applies to a transfer to another "facility" or a relocation of a resident within a "facility." A "facility" is a defined term which means a nursing home or community resident facility operating in the District. It does not necessarily apply to a transfer of a resident to a hospital. *Baugh v. District of Columbia Dep't of Con-*

sumer & Regulatory Affairs, App. D.C., 611 A.2d 557 (1992).

Word "discharge" does not encompass a short-term, temporary transfer of a resident to a hospital for medical care with every expectation of a prompt return to the facility, at least where the stay is less than 15 days. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 611 A.2d 557 (1992).*

§ 32-1442. Exemption.

This subchapter shall not apply to individual transfers, discharges, or relocations of residents who are admitted or committed under Chapter 19 of Title 6. (Apr. 18, 1986, D.C. Law 6-108, § 312, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

Applicability. — Section 32-1401 et seq. only applies to a transfer to another "facility" or a relocation of a resident within a "facility." A "facility" is a defined term which means a nursing home or community resident facility operating in the District. It does not necessarily apply to a transfer of a resident to a hospital. *Baugh v. District of Columbia Dep't of Con-*

sumer & Regulatory Affairs, App. D.C., 611 A.2d 557 (1992).

Word "discharge" does not encompass a short-term, temporary transfer of a resident to a hospital for medical care with every expectation of a prompt return to the facility, at least where the stay is less than 15 days. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 611 A.2d 557 (1992).*

§ 32-1443. Judicial review.

Any person who is aggrieved by the results of a hearing held by the Mayor pursuant to this subchapter shall have a right to judicial review in accordance with § 1-1510. (Apr. 18, 1986, D.C. Law 6-108, § 313, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

Applicability. — Section 32-1401 et seq. only applies to a transfer to another "facility" or

a relocation of a resident within a "facility." A "facility" is a defined term which means a nursing home or community resident facility operating in the District. It does not necessarily

apply to a transfer of a resident to a hospital. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 611 A.2d 557 (1992).

Word “discharge” does not encompass a short-term, temporary transfer of a resident to

a hospital for medical care with every expectation of a prompt return to the facility, at least where the stay is less than 15 days. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, App. D.C., 611 A.2d 557 (1992).

Subchapter IV. Private Rights of Action.

§ 32-1451. Injunctive relief.

A resident, a resident's representative, the Long-Term Care Ombudsman, or the Corporation Counsel may bring an action in court for a temporary restraining order, preliminary injunction, or permanent injunction to enjoin a facility from violating any provision in subchapter III of this chapter, any rule issued by the Mayor pursuant to that subchapter, or any standard or resident's right established pursuant to § 32-1304(a)(3) and (4). (Apr. 18, 1986, D.C. Law 6-108, § 401, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1452. Mandamus.

A resident, a resident's representative, the Long-Term Care Ombudsman, or the licensee or administrator of a facility may bring an action in court for mandamus to order the Mayor or any District government agency to comply with subchapter III of this chapter, any rule issued by the Mayor pursuant to that subchapter, or any other District or federal law relevant to the operation of a facility or the care of its residents. Any person bringing an action under this section shall give the Mayor at least 5 days advance notice (excluding Saturdays, Sundays, and legal holidays) before the action is filed in court. (Apr. 18, 1986, D.C. Law 6-108, § 402, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1453. Civil action for damages.

(a) A resident or resident's representative may bring an action in court to recover actual and punitive damages for any injury that results from a violation of subsection (b) of this section, subchapter III of this chapter, any rule issued by the Mayor pursuant to subchapter III of this chapter, or any standard or resident's right established pursuant to § 32-1304(a)(3) and (4). Upon proof of a violation and subject to subsection (c) of this section, the resident shall be awarded 3 times the actual damages or \$100, whichever is greater, and may be awarded punitive damages of up to \$5,000.

(b) No owner, licensee, administrator, or employee of a facility shall take any action that adversely affects a resident's rights, privileges, or living arrangement in retaliation for that resident, his or her representative, or the Long-Term Care Ombudsman having exercised a right conferred by District or

federal law, court order, or order of the Mayor. In any action brought under subsection (a) of this section alleging retaliation, there shall be a presumption, rebuttable by a showing of clear and convincing evidence, that conduct is retaliatory if an owner, licensee, administrator, or facility employee attempts to discharge, transfer, or relocate a resident within 6 months after that resident or his or her representative:

- (1) Files an action for relief under this subchapter;
- (2) Files a petition for the appointment of a receiver or monitor under subchapter II of this chapter or otherwise participates in receivership or monitor proceedings against the facility;
- (3) Exercises a right to a hearing under subchapter III of this chapter; or
- (4) Makes an oral or written complaint against the facility or its owner, licensee, administrator, or staff to an agency or official of the District government, a representative from the Long-Term Care Ombudsman program, the owner, licensee, or administrator of the facility, or an employee of the facility.

(c) The defendant in an action brought under this section may plead as an affirmative defense that he, she, or it exercised reasonable care to prevent the injury for which liability is asserted; provided, however, that the adoption of policies and procedures to effect compliance with District law shall not alone be sufficient evidence to show the exercise of reasonable care.

(d) The first \$3,000 of a damages award recovered by a resident in any action brought under this section shall be excluded from consideration when determining that resident's eligibility for Medicaid, the amount of assistance he or she is entitled to under Medicaid, or his or her assets that the District may subject to a lien, setoff, or other legal process for the purpose of satisfying any indebtedness created by the receipt of Medicaid or other public assistance payments. (Apr. 18, 1986, D.C. Law 6-108, § 403, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

§ 32-1454. Court costs and attorney's fees.

The court shall award costs and a reasonable attorney's fee to any plaintiff who prevails in an action brought under this chapter. (Apr. 18, 1986, D.C. Law 6-108, § 404, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(e), 36 DCR 534.)

Legislative history of Law 6-108. — See note to § 32-1401.

Legislative history of Law 7-218. — See note to § 32-1401.

§ 32-1455. Rights independent and nonwaivable.

(a) Whenever the grounds for a resident's discharge, transfer, or relocation are being challenged, the remedies created by this subchapter shall not be available in lieu of those established by subchapter III of this chapter. In all other cases, a person authorized to bring an action under this subchapter may do so notwithstanding the availability of other remedies, and prior exhaustion of administrative remedies shall not be required.

(b) Any purported waiver of a person's right to bring an action under this subchapter shall be void. (Apr. 18, 1986, D.C. Law 6-108, § 405, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

Subchapter V. Miscellaneous.

§ 32-1461. Rules.

The Mayor may issue rules, pursuant to subchapter I of Chapter 15 of Title 1, to carry out the purposes of this chapter. (Apr. 18, 1986, D.C. Law 6-108, § 501, 33 DCR 1510.)

Legislative history of Law 6-108. — See note to § 32-1401.

6-108. — See Mayor's Order 87-47, February 17, 1987.

Delegation of authority pursuant to Law

§ 32-1462. Privatization contracts, leases, provider agreements, and procedures requirements.

Repealed. January 26, 1996, D.C. Law 11-78, § 702, 42 DCR 6181; March 5, 1996, D.C. Law 11-98, § 502, 43 DCR 5.

Legislative history of Law 11-78. — Law 11-78, the "Budget Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-421. The Bill was adopted on first and second readings on July 29, 1995, and October 10, 1995, respectively. Signed by the Mayor on October 31, 1995, it was assigned Act No. 11-150 and transmitted to both Houses of Congress for its review. D.C. Law 11-78 became effective on January 26, 1996.

Legislative history of Law 11-98. — Law

11-98, the "Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-440, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 26, 1995, it was assigned Act No. 11-181 and transmitted to both Houses of Congress for its review. D.C. Law 11-98 became effective on March 5, 1996.

CHAPTER 15. CLINICAL LABORATORY.

Sec.	Sec.
32-1501. Definitions.	32-1507. Inspections.
32-1502. License requirements for clinical laboratories.	32-1508. Quality assurance.
32-1503. Laboratory director.	32-1509. Proficiency testing programs.
32-1504. Qualifications of technical personnel.	32-1510. Cytology screening.
32-1505. License requirements for physician office laboratories.	32-1511. Confidentiality of test results.
32-1506. Mayor's authority to establish Laboratory Advisory Board.	32-1512. Penalties and enforcement.
	32-1513. Rules.

§ 32-1501. Definitions.

For the purposes of this chapter, the term:

(1) "Basic test" means a laboratory test that requires a series of steps, reagents, additions, or instrumentation, and the result of which is determined by a visual signal.

(2) "Board" means the Laboratory Advisory Board established by § 32-1506.

(3) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, biophysical, cytological, or pathological examination of materials derived from the human body, for the purpose of obtaining information for the diagnosis, prevention, or treatment of disease, or the assessment of health. The term "clinical laboratory" shall include all independent, hospital, and District of Columbia government laboratories.

(4) "Complex test" means a laboratory test that requires sophisticated techniques, interpretation of multiple signals, or proven technical skill. Complex tests may require:

(A) Highly skilled physical manipulation;

(B) Technique dependent steps in the testing, sampling, or reading of results;

(C) User programming of the device or devices;

(D) Detailed calculation of the results;

(E) Dilution of samples with chemically reactive substances; or

(F) Preparation of reagents.

(5) "Cytotechnologist" means a person who meets qualifications for a cytotechnologist under 42 C.F.R. § 405.1315(c) (1987).

(6) "Exempt test" means a laboratory test that shall not be performed in a physician's office laboratory including pap smear test and tests for drug abuse.

(7) "Laboratory director" means the person responsible for administration of the technical and scientific operation of clinical laboratory, including supervision of procedures and reporting of findings of tests.

(8) "Laboratory reference system" means a system of periodic testing of methods, procedures, and materials of laboratories, including the distribution of manuals of approved methods, inspection of facilities, and cooperative research.

(9) "Physician office laboratory" means a laboratory operated by a physician or a physician group that performs medical laboratory tests for the

patients of the physician or physician group, and does not accept referral specimens.

(10) "Proficiency testing program" means an external program approved by the Mayor to monitor proficiency in the performance of medical laboratory tests.

(11) "Simple test" means a test that is noninstrumental in nature, and the result of which is determined by a visual signal.

(12) "Specimen" means materials derived from the human body. (Mar. 16, 1989, D.C. Law 7-182, § 2, 35 DCR 7718.)

Legislative history of Law 7-182. — Law 7-182, the "Clinical Laboratory Act of 1988", was introduced in Council and assigned Bill No. 7-373, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 12, 1988, and September 27, 1988, respec-

tively. Signed by the Mayor on October 13, 1988, it was assigned Act No. 7-240 and transmitted to both Houses of Congress for its review.

References in text. — The reference to "42 C.F.R. § 405.1315(c) (1987)", appearing in (5), does not appear in the 1990 edition of CFR.

§ 32-1502. License requirements for clinical laboratories.

(a) Except as provided in subsection (b) of this section, it shall be unlawful to operate a clinical laboratory in the District of Columbia, whether public or private, for profit or not-for-profit, unless licensed by the Mayor. The Mayor shall issue a license authorizing the performance of one or more of the following categories of laboratory tests:

- (1) Bacteriology;
- (2) Mycology;
- (3) Parasitology;
- (4) Virology;
- (5) Serology;
- (6) Blood Chemistry;
- (7) Endocrinology;
- (8) Toxicology;
- (9) Urinalysis;
- (10) Immuno-hematology;
- (11) Hematology;
- (12) Pathology; and
- (13) Cytology.

(b) Clinical laboratory licenses shall not be required of:

- (1) Clinical laboratories operated by the federal government;
- (2) Any laboratory maintained and operated purely for nonclinical research purposes, the results of which are not used for clinical application;
- (3) Any laboratory operated solely for teaching and conducting analyses, the results of which are not used for clinical application; or
- (4) A physician office laboratory licensed under § 32-1505.

(c) Clinical laboratories that, prior to March 16, 1989, were not or would not have been subject to licensure in the District of Columbia may operate without a license until 6 months after the issuance of rules pursuant to § 32-1513.

(d) An application for a clinical laboratory license shall be made by the owner of the clinical laboratory on forms provided by the Mayor. The applica-

tion shall contain the name of the owner, the name of the laboratory director, the categories of laboratory tests for which the clinical laboratory license is sought, an approved proficiency testing program in which the clinical laboratory plans to participate, the location and physical description of the facility at which tests are to be performed, and other information as the Mayor may require.

(e) A license shall be valid only for the premises stated on the application.

(f) A license shall automatically become void 30 days following a change in the laboratory director, or 30 days following a change in ownership or location of the clinical laboratory. A new application for a license may be made prior to a change in the laboratory director, ownership, or location of the clinical laboratory, or prior to the expiration of the 30-day period, in order to permit the uninterrupted operation of the clinical laboratory.

(g) Unless already terminated or renewed, a clinical laboratory license shall expire one year from the date of initial issuance or the date of last renewal. An application for a license shall be accompanied by a license fee determined by the Mayor that is commensurate to the cost of inspection.

(h) A clinical laboratory license shall specify on its face the names of the owner and the director of the laboratory, the categories of laboratory tests authorized, and the location at which the tests may be performed. Each clinical laboratory licensed under this chapter shall post its license in a conspicuous place on the premises, and have its license readily available for inspection by the public.

(i) A license shall not be issued or renewed unless:

(1) A valid certificate of qualification in the procedures for which the license is sought has been issued to the laboratory director by a recognized personnel certifying agency as approved by the Mayor;

(2) The clinical laboratory is appropriately staffed with qualified personnel and properly equipped;

(3) The clinical laboratory has participated to the satisfaction of the Mayor in an approved proficiency testing program, pursuant to § 32-1509; and

(4) The clinical laboratory is operated in the manner required by this chapter and rules issued pursuant to this chapter. (Mar. 16, 1989, D.C. Law 7-182, § 3, 35 DCR 7718.)

Section references. — This section is referred to in § 32-1505.

Legislative history of Law 7-182. — See note to § 32-1501.

Delegation of Authority Pursuant to D.C. Law 7-182. — See Mayor's Order 89-211, September 15, 1989.

§ 32-1503. Laboratory director.

(a) A clinical laboratory shall be under the direct and personal supervision of a laboratory director.

(b) To qualify as a laboratory director, a person shall:

(1) Hold a doctor of science degree or its equivalent in one of the basic sciences of chemistry, biology, or microbiology, including professional degrees in public health, medicine, osteopathy, pharmacy, dentistry, or veterinary

medicine from a college or university recognized by the National Committee of Regional Accrediting Agencies; and

(2)(A) Have a minimum of 4 years of experience in a clinical laboratory acceptable to the Mayor; or

(B) Be certified by the American Board of Pathologists, the American Board of Osteopathic Pathology, the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, or other accrediting board acceptable to the Mayor in one of the laboratory specialties.

(c) The laboratory director shall be responsible for the proper performance of all tests in a clinical laboratory. The laboratory director shall direct and supervise the testing of specimens and be responsible for the continuous application of quality control procedures to the clinical laboratory work in accordance with the rules issued pursuant to this chapter. The laboratory director shall be responsible for the work of subordinates. Clinical laboratory records of all work performed shall indicate the name of the laboratory director and be signed by or otherwise indicate the person who actually performed the test.

(d) The laboratory director shall be present for a reasonable period of each working day in each clinical laboratory for which he or she is director. If the laboratory director cannot be present on a short-term basis for a period of time to be determined by the Mayor, the laboratory director shall designate, in writing, a substitute laboratory director who meets the qualifications of subsection (b) of this section.

(e) No person may serve as a director of more than 2 clinical laboratories. (Mar. 16, 1989, D.C. Law 7-182, § 4, 35 DCR 7718.)

Section references. — This section is referred to in § 32-1505.

Legislative history of Law 7-182. — See note to § 32-1501.

§ 32-1504. Qualifications of technical personnel.

(a) A clinical laboratory shall employ a clinical laboratory technologist. A clinical laboratory technologist shall perform clinical laboratory tests with minimal supervision by the laboratory director while working in those areas in which he or she is qualified by education or experience. To qualify as a clinical laboratory technologist, a person shall hold a baccalaureate degree in medical technology or in a chemical, physical, or biological science and have at least one year of clinical laboratory experience or training acceptable to the Mayor.

(b) Technical personnel below the level of technologist shall be determined by the laboratory director to be fully qualified for all assigned technical duties. The bases for the determination shall be maintained in writing in the clinical laboratory's personnel files. The technical personnel shall have clinical laboratory training that complies with the rules issued pursuant to this chapter. (Mar. 16, 1989, D.C. Law 7-182, § 5, 35 DCR 7718.)

Section references. — This section is referred to in § 32-1505.

Legislative history of Law 7-182. — See note to § 32-1501.

§ 32-1505. License requirements for physician office laboratories.

(a) It shall be unlawful to operate a physician office laboratory in the District of Columbia, unless licensed by the Mayor. The Mayor shall issue a Level I, Level II, or Level III physician office laboratory license authorizing the performance of one or more of the following categories or subcategories of laboratory tests:

- (1) Bacteriology;
- (2) Mycology;
- (3) Parasitology;
- (4) Virology;
- (5) Serology;
- (6) Blood Chemistry;
- (7) Endocrinology;
- (8) Toxicology;
- (9) Urinalysis;
- (10) Immuno-hematology; and
- (11) Hematology.

(b) An application for a physician office laboratory license shall be made by the physician or physician group on forms provided by the Mayor. The application shall contain the name of the physician or physician group, the name of the designated supervisory physician and, for physician groups, an assistant supervisory physician, the license level and the categories of laboratory tests for which the physician office laboratory license is sought, the location and physical description of the physician office laboratory, a proficiency testing program in which the physician office laboratory will participate, and other information as the Mayor may require.

(c)(1) A physician office laboratory applying for an initial physician office laboratory license shall first receive a probationary license valid for 90 days. During the 90-day period, laboratory tests performed by the physician office laboratory shall be subject to monitoring and supervision under a proficiency testing program as set forth in § 32-1509.

(2) At the end of the 90-day period, the physician office laboratory shall submit a copy of the results of the proficiency testing program to the Mayor. If the physician office laboratory has achieved a satisfactory result in a category of tests as determined by the Mayor pursuant to § 32-1509, the physician office laboratory shall be issued a 2-year provisional physician office laboratory license authorizing the performance of one or more of the categories or subcategories of tests listed in subsection (a) of this section.

(3) If the physician office laboratory fails to achieve a satisfactory result in a category of tests, the physician office laboratory shall be required to continue under the probationary license for an additional 90 days. At the end of the additional 90-day period, if the physician office laboratory has achieved a satisfactory result in a category of tests, the physician office laboratory shall be issued a 2-year provisional physician office laboratory license authorizing the performance of one or more of the categories or subcategories of tests listed in subsection (a) of this section.

(4) A physician office laboratory that fails to achieve a satisfactory result in a category of tests during the additional 90-day probationary period shall cease to perform tests in that category. If the physician office laboratory meets the licensing requirements for clinical laboratories pursuant to § 32-1502(i) and employs a laboratory director and a medical technologist pursuant to §§ 32-1503 and 32-1504, the physician office laboratory may apply for a new 90-day probationary license.

(5) A physician office laboratory that adds a category of tests to its office laboratory license shall apply for a 90-day probationary permit for the category of tests. The physician office laboratory shall be required to qualify for the category of tests in the same manner as required for an initial 90-day probationary license, pursuant to paragraphs (1) through (4) of this subsection. If the physician office laboratory achieves a satisfactory result in the category of tests during the initial or additional 90-day period, the category of tests shall be added to the physician office laboratory license.

(d) A physician office laboratory shall designate a supervisory physician and, for physician groups, an assistant supervisory physician, who shall be responsible for the proper performance of all tests in the laboratory. The designated or assistant supervisory physician shall direct and supervise the testing of specimens and be responsible for the continuous application of quality control procedures to the laboratory work in accordance with the rules issued pursuant to this chapter. The designated or assistant supervisory physician shall be responsible for the work of subordinates. Laboratory records of all work performed shall indicate the name of the designated or assistant supervisory physician and be signed by or otherwise indicate the person who actually performed the test. The designated or assistant supervisory physician shall be present for a reasonable period of each working day in the physician office laboratory.

(e) A license shall be valid only for the premises stated on the application. A license shall automatically become void 30 days following a change in the designated supervisory physician, or 30 days following a change in the location of the physician office laboratory. A new application for a license may be made prior to a change in the designated or assistant supervisory physician, or the location of the physician office laboratory, or prior to the expiration of the 30-day period, in order to permit the uninterrupted operation of the physician office laboratory.

(f) Unless already terminated, a provisional physician office laboratory license shall expire 2 years from the date of issuance. Upon expiration of the 2-year provisional physician office laboratory license, the physician office laboratory shall be eligible for a physician office laboratory license. Unless already terminated or renewed, a physician office laboratory license shall expire one year from the date of issuance or the date of the last renewal. An application for a license shall be accompanied by a license fee determined by the Mayor.

(g) A license shall not be issued or renewed unless:

(1) The physician office laboratory is appropriately staffed and properly equipped;

(2) The designated supervisory physician and any other personnel performing or supervising tests in the physician office laboratory have successfully completed, on an annual basis, 5 hours of continuing medical education specific to the management, staffing, clinical procedures, or testing techniques of laboratory services, with proof of the completion of the continuing medical education submitted annually to the Mayor;

(3) The physician office laboratory has participated to the satisfaction of the Mayor in an approved proficiency testing program, pursuant to § 32-1509; and

(4) The laboratory is operated in the manner required by this chapter and rules issued pursuant to this chapter.

(h) A physician office laboratory shall post its license in a conspicuous place in the premises and shall have its license readily available for inspection by the public.

(i) A Level I physician office laboratory may perform simple tests and may be subject to inspections. A Level II physician office laboratory shall be subject to the inspection provisions of § 32-1507(a) and may perform simple and basic tests. A Level III physician office laboratory shall be subject to the inspection provisions of § 32-1507(a) and (b) and may perform simple, basic, and complex tests. A new application for a license shall be required for a physician office laboratory prior to a change in testing level.

(j) The Mayor may adopt rules pursuant to § 32-1513 that set additional requirements or limitations for Level I, Level II, or Level III physician office laboratory licenses.

(k) A physician office laboratory shall not perform exempt tests.

(l) Physician office laboratories may continue to perform laboratory tests without a physician office laboratory license until 6 months after the issuance of rules pursuant to this chapter. (Mar. 16, 1989, D.C. Law 7-182, § 6, 35 DCR 7718.)

Section references. — This section is referred to in § 32-1502.

Legislative history of Law 7-182. — See note to § 32-1501.

Delegation of Authority Pursuant to D.C. Law 7-182. — See Mayor's Order 89-211, September 15, 1989.

§ 32-1506. Mayor's authority to establish Laboratory Advisory Board.

(a) The Mayor shall appoint a Laboratory Advisory Board, which will advise the Mayor on:

(1) Classifying laboratory tests as simple, basic, complex, or exempt, for the purposes of this chapter;

(2) Developing additional requirements or limitations for Level I, Level II, or Level III physician office laboratory licenses;

(3) Proficiency testing programs and certifying institutions and organizations for the purposes of this chapter; and

(4) Developing rules and procedures for inspections of laboratories.

(b) The Mayor shall appoint the members of the Board within 60 days of March 16, 1989.

(c) The Board shall transmit its written recommendations to the Mayor within 180 days of the date of the appointment of all members and shall then cease to exist.

(d) The Mayor may appoint a temporary board, at the Mayor's discretion, for whatever periods of the time the Mayor deems necessary because of advancements in technology or other purposes consistent with carrying out the provisions of this chapter. (Mar. 16, 1989, D.C. Law 7-182, § 7, 35 DCR 7718.)

Section references. — This section is referred to in § 32-1501.

Legislative history of Law 7-182. — See note to § 32-1501.

§ 32-1507. Inspections.

(a) The Mayor shall conduct inspections of clinical laboratories and Level II and Level III physician office laboratories, methods, procedures, materials, staff, and equipment with an option to inspect Level I physician office labs as deemed appropriate. Nothing shall prohibit an authorized District government official from entering the premises of any laboratory regulated by this chapter during operating hours for the purpose of conducting an announced or unannounced inspection consistent with constitutional guidelines to check for compliance with any provision of this chapter or rules issued pursuant to this chapter. In conducting an inspection, the District government official shall make every effort not to disrupt the normal operations of the laboratory and its staff.

(b) To ensure that each clinical laboratory and each Level III physician office laboratory is in compliance with the provisions of this chapter, and the rules issued pursuant to this chapter, the Mayor shall conduct an on-site inspection prior to the laboratory's initial licensure and before each license renewal. Temporary licenses or renewals may be granted for a period not to exceed 60 days to afford the Mayor sufficient time to conduct the on-site inspection. The Mayor may issue a provisional license for less than one year to a new clinical laboratory, pending satisfactory completion of additional follow-up inspections. (Mar. 16, 1989, D.C. Law 7-182, § 8, 35 DCR 7718.)

Section references. — This section is referred to in § 32-1505.

Legislative history of Law 7-182. — See note to § 32-1501.

§ 32-1508. Quality assurance.

(a) The Mayor shall operate a laboratory reference system and shall prescribe standards for the examination of specimens.

(b) The Mayor shall adopt rules pursuant to § 32-1513 that:

(1) Prohibit payment to laboratory personnel based upon the number of tests performed; and

(2) Limit the number of hours that laboratory personnel may work.

(c) The Mayor shall set standards for proficiency testing programs to determine a satisfactory result, a satisfactory level of overall performance, and a substandard level of overall performance. (Mar. 16, 1989, D.C. Law 7-182, § 9, 35 DCR 7718.)

Legislative history of Law 7-182. — See note to § 32-1501.

§ 32-1509. Proficiency testing programs.

(a) Each clinical or physician office laboratory shall participate in a proficiency testing program approved by the Mayor.

(b) A proficiency testing program shall include proficiency testing at least 4 times per year. Proficiency tests shall be conducted for each category of tests for which the clinical or physician office laboratory has obtained a license.

(c) The clinical or physician office laboratory shall demonstrate continuing satisfactory performance in the proficiency testing program. Continuing satisfactory performance shall include:

(1) A determination of a satisfactory level of overall performance on each quarterly proficiency test; or

(2) A determination of a substandard level of overall performance on 1 quarterly proficiency test, followed by completion of an approved course of education in proper laboratory techniques and procedures, and a satisfactory level of overall performance on the next quarterly proficiency test.

(d) Proficiency testing programs shall report the results of each proficiency test to the Mayor. Upon receipt of a determination of a substandard level of overall performance, the Mayor shall, within 30 days, inspect the clinical or physician office laboratory at any time during normal operating hours. For the purpose of this section, a substandard level of overall performance shall include intentional nonperformance.

(e) Upon completion of the inspection, the Mayor shall determine if any deficiencies exist. Upon an affirmative determination of any deficiency, the Mayor shall notify the laboratory director or the designated supervisory physician in writing of the deficiencies. The clinical or physician office laboratory shall submit a written plan to correct the deficiencies and an appropriate course of remedial education and dates by which the corrections shall be made to the Mayor within 30 days of the receipt of the notice of the deficiencies.

(f) If the clinical or physician office laboratory does not submit a plan for corrective action that is approved by the Mayor, or if a clinical or physician office laboratory is determined by the Mayor after a subsequent inspection not to have corrected the deficiencies as specified in the plan by the expiration dates in the plan, the Mayor may take action to revoke, suspend, or limit the laboratory license pursuant to § 32-1512.

(g) The analyses and reports of a proficiency testing program may be considered by the Mayor in proceedings under § 32-1513. (Mar. 16, 1989, D.C. Law 7-182, § 10, 35 DCR 7718.)

Section references. — This section is referred to in §§ 32-1502, 32-1505, and 32-1512.

Legislative history of Law 7-182. — See note to § 32-1501.

§ 32-1510. Cytology screening.

The Mayor shall adopt rules pursuant to § 32-1513 that:

- (1) Limit the number of slides a cytotechnologist may examine per day;
- (2) Prohibit cytotechnologists from examining slides at any building not owned or used by a licensed clinical laboratory;
- (3) Require clinical laboratories to rescreen no less than 10% of all negative pap smears, and require that pap smear rescreening be performed by a supervisory level cytotechnologist;
- (4) Require clinical laboratories rescreen all negative noncervical smears, and require that noncervical smear rescreening be performed by a supervisory level pathologist;
- (5) Require clinical laboratories to reject improperly prepared smear specimens, make appropriate comments regarding the quality of the specimen, and maintain records on improperly prepared specimens for 5 years subject to review by the Mayor;
- (6) Require clinical laboratories to maintain and store for 5 years from the date of examination any smear slide that was examined for disease or disease agents; and
- (7) Require all smear specimen reports to be retained for at least 10 years. (Mar. 16, 1989, D.C. Law 7-182, § 11, 35 DCR 7718.)

Legislative history of Law 7-182. — See note to § 32-1501.

§ 32-1511. Confidentiality of test results.

(a) A patient may request, in writing, access to or copies of the results of the patient's own laboratory tests.

(b)(1) All requests for clinical or physician office laboratory services, the results of all clinical or physician office laboratory tests, and the contents of patient specimens shall be confidential.

(2) Persons other than the patient or the patient's physician may have access to the results of the patient's laboratory tests if:

(A) The patient has given written consent to the person seeking access for the release of the records for a specific use; or

(B) The court has issued a subpoena for the results of the patient's laboratory tests, and except in a law enforcement investigation, the person seeking access has given the patient notice and an opportunity to contest the subpoena.

(c) All clinical laboratory results shall be reported to the requesting physician. When there is no requesting physician, the clinical laboratory shall report the test results to the patient and shall recommend that the patient forward the laboratory results to the patient's personal physician as soon as possible. (Mar. 16, 1989, D.C. Law 7-182, § 12, 35 DCR 7718.)

Legislative history of Law 7-182. — See note to § 32-1501.

§ 32-1512. Penalties and enforcement.

(a) A clinical or physician office laboratory license may be revoked, suspended, or limited by the Mayor on proof that the laboratory or one or more of its employees:

(1) Has made misrepresentations in obtaining the license or in the operation of the laboratory;

(2) Has engaged or attempted to engage or represented the laboratory as entitled to perform any laboratory procedure not authorized by the license;

(3) Has rendered a laboratory report actually performed in another laboratory without designating the fact that the examination or procedure was performed in another laboratory;

(4) Has failed to submit a plan for corrective action or failed to correct deficiencies as required in § 32-1509; or

(5) Has failed to file a report required by the provisions of this chapter or the rules issued pursuant to this chapter.

(b)(1) If the Mayor determines, after investigation, that the conduct of a licensee presents an imminent danger to the health and safety of the residents of the District, the Mayor may summarily suspend or restrict, without a hearing, the license of the laboratory employee.

(2) The Mayor, at the time of the summary suspension or restriction of a license, shall provide the licensee with written notice stating the action that is being taken, the basis for the action, and the right of the licensee to request a hearing.

(3) A licensee shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license. The Mayor shall hold a hearing within 72 hours of receipt of a timely request, and shall issue a decision within 72 hours after the hearing.

(4) Every decision and order adverse to a licensee shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings shall be supported by, and in accordance with, reliable, probative, and substantial evidence. The Mayor shall provide a copy of the decision and order and accompanying findings of fact and conclusions of law to each party to a case or to each party's attorney of record.

(c)(1) When the Mayor, after investigation, but prior to a hearing, has cause to believe that any laboratory or laboratory employee is violating any provision of this chapter and the violation has caused or may cause immediate and irreparable harm to the public, the Mayor may issue an order requiring the alleged violator to cease and desist immediately from the violation. The order shall be served by certified mail or by personal service.

(2) The alleged violator may, within 15 days of the service of the order, submit a written request to the Mayor to hold a hearing on the alleged violation.

(3) Upon receipt of timely request, the Mayor shall conduct a hearing and render a decision.

(4)(A) The alleged violator may, within 10 days of the service of an order, submit a written request to the Mayor for an expedited hearing on the alleged

violation, in which case the alleged violator shall waive his or her right to the 15-day notice.

(B) Upon receipt of a timely request for an expedited hearing, the Mayor shall conduct a hearing, pursuant to subchapter I of Chapter 15 of Title 1, within 10 days of the date of receiving the request and shall deliver to the alleged violator at his or her last known address a written notice of the hearing, at least 5 days before the hearing date.

(5) The Mayor shall issue a decision within 30 days after an expedited hearing. If a request for a hearing is not made, the order of the Mayor to cease and desist is final. If, after a hearing, the Mayor determines the alleged violator is not in violation of this chapter, the Mayor shall revoke the order to cease and desist. If any person fails to comply with a lawful order the Mayor issued pursuant to this section, the Mayor may petition the court to issue an order compelling compliance or take other action authorized by this chapter.

(d) Except as provided in this subsection, no license shall be revoked, suspended, or limited without a hearing pursuant to subchapter I of Chapter 15 of Title 1. If a license is revoked or limited for failure to demonstrate continuing satisfactory performance, reinstatement of the license shall require demonstration of proficiency over a testing period, not to exceed 6 months.

(e) Any laboratory director, laboratory owner, or designated supervisory physician who willfully and knowingly participates in the unlawful operation of a clinical or physician office laboratory in the District of Columbia, and any person who intentionally impedes a District of Columbia official or employee in the performance of his or her authorized duties under this chapter or any rules issued pursuant to this chapter, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not exceeding \$1,000 per day until the violation ceases, imprisonment for not more than 90 days, or both. Prosecution shall be in the Superior Court of the District of Columbia upon information by the Corporation Counsel or one of his or her assistants.

(f) A violation of this chapter shall be a civil infraction for purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this chapter, or the rules issued under authority of this chapter, pursuant to Chapter 27 of Title 6. Adjudication of any infractions shall be pursuant to Chapter 27 of Title 6.

(g) Notwithstanding the availability of any other remedy, the Corporation Counsel or one of his or her assistants may maintain, in the name of the District of Columbia, an action in the Superior Court of the District of Columbia to enjoin any person, agency, corporation, or other entity from operating a clinical or physician office laboratory in violation of the terms of its license, the provisions of this chapter, or any rules issued pursuant to this chapter. (Mar. 16, 1989, D.C. Law 7-182, § 13, 35 DCR 7718.)

Section references. — This section is referred to in § 32-1509.

Legislative history of Law 7-182. — See note to § 32-1501.

References in text. — The “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985”, referred to in subsection (f), is D.C. Law 6-42.

§ 32-1513. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules, including a schedule of civil fines, to implement the provisions of this chapter.

(b) The Mayor may issue emergency rules, which shall be effective no more than 90 days and which shall be consistent with subchapter I of Chapter 15 of Title 1. (Mar. 16, 1989, D.C. Law 7-182, § 14, 35 DCR 7718.)

Section references. — This section is referred to in §§ 32-1502, 32-1505, and 32-1508 to 32-1510.

Legislative history of Law 7-182. — See note to § 32-1501.

Delegation of Authority Pursuant to D.C. Law 7-182. — See Mayor's Order 89-211, September 15, 1989.

CHAPTER 16. SUBSTANCE ABUSE TREATMENT AND PREVENTION.

Sec.	Sec.
32-1601. Definitions.	32-1606. Substance abuse prevention campaign.
32-1602. Eligibility for treatment for substance abuse.	32-1607. Fees; rules.
32-1603. Establishment of substance abuse treatment facility.	32-1608. Limitations on benefits.
32-1604. Certification requirements.	32-1609. Impact on insurance coverage.
32-1605. Financial assistance program.	32-1610. Appropriations.

§ 32-1601. Definitions.

- (1) "District" means the District of Columbia.
- (2) "Drug" means any of the controlled substances enumerated in § 33-514, 33-516, 33-518, 33-520, or 33-522.
- (3) "Mayor" means the Mayor of the District of Columbia.
- (4) "Qualified health professional" means a person licensed to practice in the District as a physician, psychiatrist, registered nurse, or independent clinical social worker, pursuant to Chapter 33 of Title 2.
- (5) "Resident" means any person who lives in the District voluntarily and not for a temporary purpose and has no intention of presently removing himself or herself from the District. Temporary absence from the District, with subsequent returns to the District, or intent to return when the purposes of the absence have been accomplished shall not interrupt continuity of residence. For the purposes of this chapter, residency shall not depend upon the reason that the individual entered the District except that it may bear on whether he or she is in the District for a temporary purpose.
- (6) "Substance abuse" means a pattern of pathological use of a drug or alcohol that causes impairment in social or occupational functioning or produces physiological dependency evidenced by physical tolerance or physical symptoms when the drug or alcohol is not used.
- (7) "Treatment facility" means the substance abuse treatment facility established pursuant to § 32-1603. (Mar. 15, 1990, D.C. Law 8-80, § 2, 36 DCR 8469.)

Legislative history of Law 8-80. — Law 8-80, "District of Columbia Substance Abuse Treatment and Prevention Act of 1989," was introduced in Council and assigned Bill No. 8-403, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 7, 1989, and November 21, 1989, respectively. Signed by the

Mayor on December 12, 1989, it was assigned Act No. 8-124 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to D.C. Law 8-80, the "D.C. Substance Abuse Treatment and Prevention Act of 1989." — See Mayor's Order 91-96, June 5, 1991.

§ 32-1602. Eligibility for treatment for substance abuse.

- (a) Each District resident who meets the requirements of this section shall be eligible for treatment for substance abuse at the treatment facility, regardless of his or her ability to pay, subject to the restriction in § 32-1608, if the resident:

(1) Applies for treatment or is referred for treatment by a court of competent jurisdiction; and

(2) Has been examined by a qualified health professional who has determined that the individual needs treatment for substance abuse in a nonhospital residential setting.

(b) Any minor, pregnant woman, or the parent, guardian, or other person who has legal custody of a minor and who meets the requirements of this section shall have priority for admission to the treatment facility over any single adult who does not have a minor child.

(c) The determination of an individual's need for treatment may be made by a qualified health professional on duty at the treatment facility or by any other qualified health professional who has examined the individual prior to the individual's application or referral for admission. (Mar. 15, 1990, D.C. Law 8-80, § 3, 36 DCR 8469.)

Legislative history of Law 8-80. — See note to § 32-1601.

§ 32-1603. Establishment of substance abuse treatment facility.

(a) Within one year from March 15, 1990, the Mayor shall establish a comprehensive substance abuse treatment facility to provide residential and outpatient treatment for persons who suffer from substance abuse, regardless of a person's ability to pay.

(b) The treatment facility shall be under the management of a director who shall be a qualified health professional appointed by the Mayor.

(c) The treatment facility shall have an initial space and staff capacity to admit at least 250 individuals for inpatient treatment and provide appropriate follow-up treatment on an outpatient basis, except that a minimum of 150 additional beds shall be authorized if federal funds are available to fund the additional beds. The treatment facility subsequently shall be expanded based upon the need and the availability of funds.

(d) The treatment facility shall be centrally managed, but may be physically located at more than one site, if the director determines that separate sites are necessary to provide the most effective treatment.

(e) The treatment facility shall be subject to the certification requirements established by § 32-1604. (Mar. 15, 1990, D.C. Law 8-80, § 4, 36 DCR 8469.)

Section references. — This section is referred to in §§ 32-1601 and 32-1607.

Legislative history of Law 8-80. — See note to § 32-1601.

§ 32-1604. Certification requirements.

(a) Any public or private person, partnership, corporation, association, charitable organization, or other legally-constituted entity, whether for profit or not for profit, that provides or offers to provide nonhospital residential or outpatient treatment for substance abuse shall be certified by the Mayor as a condition of operation and shall operate in compliance with the standards

necessary to maintain certification. The Mayor may certify a facility as qualified to provide nonhospital residential treatment, outpatient treatment, or both.

(b) To qualify for certification, a substance abuse treatment facility shall demonstrate to the satisfaction of the Mayor that the treatment facility meets the standards established by § 35-2306(c)(1), (2), and (3).

(c) In addition to the requirement set forth in subsection (b) of this section, a substance abuse treatment facility that offers or proposes to offer nonhospital residential treatment shall demonstrate to the satisfaction of the Mayor that it has the staff, space, and financial resources to provide each patient with a sufficient number of consecutive days of nonhospital residential care to treat the substance abuse disorder that the patient experiences.

(d) In addition to the requirement set forth in subsection (b) of this section, a substance abuse treatment facility that offers or proposes to offer outpatient treatment shall demonstrate to the satisfaction of the Mayor that it has the staff, space, and financial resources to provide each patient with a sufficient number of treatment sessions on a regular schedule to treat the substance abuse disorder that the patient experiences.

(e) The Mayor, after the provision of notice and an opportunity for a hearing in accordance with § 1-1509, shall suspend or revoke the certification of a substance abuse treatment facility upon a determination by the Mayor that the substance abuse treatment facility is not in substantial compliance with the requirements of subsection (b) and subsection (c) or (d) of this section, whichever is applicable. If the Mayor suspends certification of a treatment facility pursuant to this subsection, the period of suspension shall be for a fixed period of time and shall be specified by the Mayor in the suspension order.

(f) The penalty for the operation of a substance abuse treatment facility without the certification required by this section shall be:

(1) A civil fine of not less than \$100 for each day of operation without certification; and

(2) Revocation of the certificate of occupancy issued by the Department of Consumer and Regulatory Affairs for the premises occupied by the substance abuse treatment facility. (Mar. 15, 1990, D.C. Law 8-80, § 5, 36 DCR 8469.)

Section references. — This section is referred to in §§ 32-1603 and 32-1605.

Legislative history of Law 8-80. — See note to § 32-1601.

§ 32-1605. Financial assistance program.

(a) There is established within the District government a program to provide financial assistance to any person or organization that applies for financial assistance to conduct a program of substance abuse prevention in accordance with the applicable provisions of Chapter 11A of Title 1.

(b) Any person or organization that applies for financial assistance from the District government to conduct a program of substance abuse prevention, education, or counseling, as a condition of receiving assistance, shall demonstrate to the satisfaction of the Mayor that:

(1) The program has been developed in consultation with a qualified health professional;

(2) The content of written, audiovisual, or other information to be provided through the program is accurate, current, and consistent with established medical or scientific findings;

(3) The program will be carried out in accordance with a systematic written plan that shall include goals, timetables, and specific methods to measure the progress and effectiveness of achieving the established goals; and

(4) The program meets any other criteria established by rules issued pursuant to § 32-1607(c).

(c) The requirements of § 32-1604 and subsection (b) of this section shall not apply to:

(1) A hospital licensed by the District government pursuant to Chapter 13 of this title; or

(2) A health professional licensed pursuant to Chapter 33 of Title 2, who provides outpatient substance abuse treatment to private patients within the scope of the practice of the health occupation that he or she is licensed to practice. (Mar. 15, 1990, D.C. Law 8-80, § 6, 36 DCR 8469.)

Legislative history of Law 8-80. — See note to § 32-1601.

§ 32-1606. Substance abuse prevention campaign.

(a) The Mayor shall establish and implement a public education campaign intended to prevent substance abuse.

(b) The public education campaign shall incorporate, at a minimum, the following:

(1) The dissemination of statistics and other information that illustrate the dangers of drug use and alcohol abuse;

(2) The dissemination of information about the symptoms of substance abuse and dependence;

(3) The dissemination of information about methods to treat substance abuse and the availability and cost of treatment facilities in the District;

(4) The dissemination of literature designed for different age groups and levels of education published by the District government for distribution on a regular basis at public places deemed appropriate by the Mayor;

(5) A series of print, audio, and audiovisual substance abuse education messages to be provided on a continuing basis to all newspapers, magazines, radio and television stations, and other mass communications media in the District for use as public service announcements or advertisements;

(6) Community forums offered by the District government in conjunction with professional organizations, community organizations, or individual volunteers to be conducted on a regular basis at schools, recreation centers, civic and community centers, and other similar facilities; and

(7) A speaker's bureau of qualified personnel available to speak, lead discussions, and present written or audiovisual material at school and community programs.

(c) All print, audio, and audiovisual material distributed in conjunction with the public education campaign shall include the names, addresses, and telephone numbers of appropriate treatment facilities in the District.

(d) The Mayor shall implement the public education campaign in a manner that promotes the coordination of efforts by participating agencies and the District of Columbia Public Schools. (Mar. 15, 1990, D.C. Law 8-80, § 7, 36 DCR 8469.)

Legislative history of Law 8-80. — See note to § 32-1601.

§ 32-1607. Fees; rules.

(a) The Mayor, by rule, shall establish a graduated, need-based, schedule of fees to charge individuals who receive treatment at the treatment facility established pursuant to § 32-1603.

(b) The director of the treatment facility may file claims for payment for services provided to an individual who is a beneficiary of a policy or contract of health insurance that provides coverage for drug treatment services.

(c) The Mayor, pursuant to subchapter I of Chapter 15 of Title 1, shall issue any other rules necessary to implement the provisions of this chapter. (Mar. 15, 1990, D.C. Law 8-80, § 8, 36 DCR 8469.)

Section references. — This section is referred to in § 32-1605.

Legislative history of Law 8-80. — See note to § 32-1601.

§ 32-1608. Limitations on benefits.

Nothing in this chapter shall be construed to create an entitlement to substance abuse treatment during any fiscal year if no funds remain available to the District government under a District government or federal appropriation that has been enacted for the specific purpose of providing substance abuse treatment services or unless the person has the ability to pay. (Mar. 15, 1990, D.C. Law 8-80, § 9, 36 DCR 8469.)

Section references. — This section is referred to in § 32-1602.

Legislative history of Law 8-80. — See note to § 32-1601.

§ 32-1609. Impact on insurance coverage.

Nothing in this chapter shall be construed to relieve any insurer from providing the coverage required by Chapter 23 of Title 35. (Mar. 15, 1990, D.C. Law 8-80, § 10, 36 DCR 8469.)

Legislative history of Law 8-80. — See note to § 32-1601.

§ 32-1610. Appropriations.

Sufficient funds to carry out the requirements of this chapter are authorized to be appropriated out of the general revenues of the District of Columbia. (Mar. 15, 1990, D.C. Law 8-80, § 11, 36 DCR 8469.)

Legislative history of Law 8-80. — See note to § 32-1601.

CHAPTER 17. JUDICIARY SQUARE DETENTION FACILITY CONSTRUCTION.

Sec.

32-1701. Definitions.

32-1702. Judiciary Square detention facility requirements.

Sec.

32-1703. Responsibilities of the Mayor.

§ 32-1701. Definitions.

For the purposes of this chapter, the term:

(1) "Council" means the Council of the District of Columbia.

(2) "Judiciary Square" means the area generally bounded by H Street, N.W. to the north, 6th Street, N.W. to the west, Pennsylvania Avenue, N.W. and Constitution Avenue, N.W. to the south, and 1st Street, N.W. and 3rd Street, N.W. to the east.

(3) "Mayor" means the Mayor of the District of Columbia. (May 4, 1990, D.C. Law 8-117, § 2, 37 DCR 1733.)

Legislative history of Law 8-117. — Law 8-117, "Judiciary Square Detention Facility Construction Act of 1990," was introduced in Council and assigned Bill No. 8-405, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings

on January 30, 1990, and February 13, 1990, respectively. Approved without the signature of the Mayor on March 6, 1990, it was assigned Act No. 8-171 and transmitted to both Houses of Congress for its review.

§ 32-1702. Judiciary Square detention facility requirements.

(a) The Mayor shall construct or renovate a building within or near Judiciary Square for use as a detention facility for the District of Columbia ("District") to house not more than 1,500 inmates. The facility shall comply with the American Correctional Association standards for correctional facilities.

(b) The facility shall house primarily pretrial detainees, persons convicted of misdemeanors, and parole violators held pending a parole revocation hearing.

(c) The Mayor shall issue proposed rules to classify inmates in an incoming inmate reception and diagnostic program of the facility according to rehabilitative needs, the crime committed, any drug abuse history, and appropriate housing requirements. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (May 4, 1990, D.C. Law 8-117, § 3, 37 DCR 1733.)

Legislative history of Law 8-117. — See note to § 32-1701.

§ 32-1703. Responsibilities of the Mayor.

(a) The Mayor shall submit to the Council a proposal for a detention facility within or near Judiciary Square within 90 days of November 7, 1989.

(b) If the Mayor has not entered into a design construction contract for the detention facility within 180 days of May 4, 1990, the Mayor shall submit a report to the Council that details the progress of the plans for a detention facility and the reason that a contract has not been executed.

(c) The Mayor shall not dispose of any property owned by or under the jurisdiction of the District government within or near Judiciary Square until a site for a detention facility has been selected or acquired, except that an appropriate disposition may be made for the National Law Enforcement Officers Memorial ("Memorial"), which is to be built pursuant to the Joint Resolution Authorizing the Law Enforcement Officers Memorial Fund to establish a memorial in the District of Columbia or its environs, Pub. L. 98-534, 98 Stat. 2712 (1984). The detention facility shall not be located on private property or on the same property or property immediately adjacent to the planned site of the Memorial, which is to be built on the block bounded by F Street, N.W., to the north, E Street, N.W., to the south, 5th Street, N.W., to the west, and 4th Street, N.W., to the east, provided that the construction of the Memorial in no way prevents or delays the construction of the detention facility. Nothing in this subsection shall be construed to limit the District's powers of eminent domain. (May 4, 1990, D.C. Law 8-117, § 4, 37 DCR 1733.)

Legislative history of Law 8-117. — See note to § 32-1701.

TITLE 33. FOOD AND DRUGS.

Chapter

1. Adulteration..... §§ 33-101 to 33-110.
2. Candy..... §§ 33-201 to 33-203.
3. Milk, Cream, and Ice Cream..... §§ 33-301 to 33-312.
4. Meats and Meat Products..... §§ 33-401 to 33-403.
5. Controlled Substances..... §§ 33-501 to 33-585.
6. Drug Paraphernalia..... §§ 33-601 to 33-604.
7. Prescription Drug Price Information..... §§ 33-701 to 33-743.
8. Donated Food..... §§ 33-801 to 33-802.
9. Food Production and Urban Gardens Program..... §§ 33-901 to 33-903.
10. Drug Manufacture and Distribution Licensure... §§ 33-1001 to 33-1015.

CHAPTER 1. ADULTERATION.

Sec.

- 33-101. Possession or disposition of adulterated articles prohibited.
- 33-102. Definitions — “Drug”; “food.”
- 33-103. Same — “Adulterated article” defined.
- 33-104. Enforcement measures; rules and regulations.
- 33-105. Complaints to be investigated.

Sec.

- 33-106. Furnishment of samples for analysis.
- 33-107. Portion of sample analyzed to be sealed and retained.
- 33-108. Interference with officials prohibited.
- 33-109. Prosecutions; violations.
- 33-110. Inconsistent acts repealed; certain Acts preserved.

§ 33-101. Possession or disposition of adulterated articles prohibited.

No person shall, within the District of Columbia, by himself or by his servant or agent, or as the servant or agent of any other person, sell, exchange, or deliver, or have in his custody or possession with the intent to sell or exchange, or expose or offer for sale or exchange, any article of food or drug which is adulterated within the meaning of this chapter. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 1; 1973 Ed., § 33-101.)

Cross references. — As to weights and measures, see §§ 10-101 to 10-138.

As to implied warranties, see § 28:2-315.

As to adulteration of candy, see § 33-201.

Section references. — This section is referred to in § 33-302.

Ignorance of adulteration is no defense.

— It is no defense for a druggist prosecuted for selling an adulterated drug to show simply that

he was at the time of the sale ignorant of the fact that the drug was adulterated; he must know what he sells, or proposes to sell, and that it conforms to the standard prescribed by law. *District of Columbia v. Lynham*, 16 App. D.C. 85 (1900).

Cited in *Belton v. United States*, App. D.C., 581 A.2d 1205 (1990).

§ 33-102. Definitions — “Drug”; “food.”

The term “drug,” as used in this chapter, shall include all medicines for external or internal use, antiseptics, disinfectants, and cosmetics. The term “food,” as used in this chapter, shall include confectionery, condiments, and all articles used for food or drink by man, and if there be more than one quality of any article of food or drug known by the same name the best quality thereof

shall be furnished to the purchaser, unless he otherwise requests at the time of making such purchase, or unless he be notified at such time of the inferior quality of the article delivered. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 2; 1973 Ed., § 33-102.)

Section references. — This section is referred to in § 33-302.

§ 33-103. Same — “Adulterated article” defined.

An article shall be deemed to be adulterated within the meaning of this chapter:

(1) In the case of drugs: (A) if, when sold under or by a name recognized in the United States Pharmacopoeia, it differs from the standard of strength, quality, or purity laid down in the edition thereof at the time official; (B) if, when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in the German, French, or English Pharmacopoeia, it differs from the strength, quality, or purity laid down therein; (C) if, when sold as a patented medicine, compounded drug, or mixture, it is not composed of all of the ingredients advertised or printed or written on the bottles, wrappers, or labels of or on or with the patented medicine, compounded drug, or mixture; provided, that if the defendant in any prosecution under this chapter, in respect to the sale of any such patented medicine, compounded drug, or mixture, shall prove to the satisfaction of the court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution;

(2) In the case of food: (A) in the case of cheese, if it is not made exclusively from milk or cream, or both, with or without common salt; (B) in the case of coffee, if it is not composed entirely of the seed of the *Coffea arabica*; (C) in the case of lard, if it is not made exclusively from the rendered fat of the healthy hog; (D) in the case of tea, if it is not composed entirely of the genuine leaf of the tea plant not exhausted; (E)(i) in the case of all kinds of vinegar, if it contains an acidity equivalent to the presence of less than 4% of absolute acetic acid; and (ii) cider vinegar, if it is not made from the pure apple juice and contains less than 1.5% of total solids; (F)(i) in the case of cider, if it is not made from the legitimate product of pure apple juice; and (ii) in the case of wines and fruit juices, if not made from the pure fruit as represented; and (iii) in the case of cider, wines, fruit juices, and malt liquors, if not free from salicylic acid or other preservatives; and (iv) in the case of malt liquors, if not free from piric acid, *coccus indicus*, colchicine, colocynth, aloes, and wormwood; (G) in the case of glucose, if it contains more than .05% of ash; (H) in the case of flour, if it is not composed entirely of one single ground cereal; (I) in the case of bread, if there is any addition of alum, sulphate of copper, borax, or sulphate of zinc, or other poisonous or harmful ingredient, and if it contains more than 31% of moisture, more than 2% of ash, and less than 6.25% of albuminoids; (J) in the

case of olive oil, if it is not made exclusively from the olive berry (*Olea europaea*), and its specific gravity at 15.6° Centigrade (60° Fahrenheit) "actual density" to be not more than 900.017 nor less than 900.014; provided, that an offense shall not be deemed to be committed under this section in the following cases, that is to say:

(A) Where the order calls for an article of food or drug inferior to such standard, or where such difference is made known by being plainly written or printed on the package;

(B) Where the article of food or drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure or conceal its inferior quality, if at the time such article is delivered to the purchaser it is made known to him that such article of food or drug is so mixed. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 3; June 30, 1906, 34 Stat. 768, ch. 3915; Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13; 1973 Ed., § 33-103.)

Cross references. — As to regulation and control of production and sale of milk and milk products, see §§ 33-301 to 33-312.

Section references. — This section is referred to in § 33-302.

Ignorance of adulteration is no defense. — It is no defense for a party prosecuted for selling adulterated foods to show that he was ignorant of such fact; he must know what he

sells and that it conforms with the law. *District of Columbia v. Lynham*, 16 App. D.C. 85 (1900).

Labels on drugs. — The label on drugs must state the substance from which such derivative is produced. *United States v. Antikamnia Chem. Co.*, 231 U.S. 654, 34 S. Ct. 222, 58 L. Ed. 419 (1914).

Cited in *Belton v. United States*, App. D.C., 581 A.2d 1205 (1990).

§ 33-104. Enforcement measures; rules and regulations.

It shall be the duty of the Director of Public Health of the District of Columbia, under the direction of the Mayor of said District, to adopt such measures as may be necessary to facilitate the enforcement of this chapter, and of the Council of the District of Columbia to prepare rules and regulations with regard to the proper method of collecting and examining drugs and articles of food in said District. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 33-104.)

Cross references. — As to rules and regulations for protection of life, health, and property, see § 1-319.

Section references. — This section is referred to in § 33-302.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see *Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization* in Volume 1). Section 402(258) of Reorganization Plan No. 3 of 1967 (see *Reorganization Plans* in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 213(a)), appropriate changes in terminology were made in this section.

Office of Director of Public Health abolished. — Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred

to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions

and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. Functions stated in Organization Order No. 141 were transferred to the Department of Environmental Services by Commissioner's Order 71-255, dated July 27, 1971, as amended by Commissioner's Order 72-96, dated April 18, 1972. Functions stated in Commissioner's Order 71-255 were transferred to the Director of Consumer and Regulatory Affairs by § III B. (9) of Reorganization Plan No. 1 of 1983.

§ 33-105. Complaints to be investigated.

It shall be the duty of the Director of Public Health to investigate a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to substantiate such complaints. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 33-105.)

Section references. — This section is referred to in § 33-302.

Office of Director of Public Health abolished. — Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of

members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. Functions stated in Organization Order No. 141 were transferred to the Department of Environmental Services by Commissioner's Order 71-255, dated July 27, 1971, as amended by Commissioner's Order 72-96, dated April 18, 1972. Functions stated in Commissioner's Order 71-255 were transferred to the Director of Consumer and Regulatory Affairs by § III B. (9) of Reorganization Plan No. 1 of 1983.

§ 33-106. Furnishment of samples for analysis.

Every person offering for sale or delivering to any purchaser any drug or article of food included in the provisions of this chapter shall furnish to any analyst or other officer or agent of the Department of Human Services, who shall apply to him for the purpose and shall tender him the value of the same, a sample sufficient for the purpose of analysis of any such drug or article of food which is in his possession. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 6; 1973 Ed., § 33-106.)

Cross references. — As to regulation and control of production and sale of milk and milk products, see §§ 33-301 to 33-312.

Section references. — This section is referred to in § 33-302.

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board

was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 33-107. Portion of sample analyzed to be sealed and retained.

In all cases where any drug or article of food shall be taken as a sample to be examined and analyzed, the person making the analysis shall reserve a portion of the sample, which shall be sealed, for a period of 30 days from the time of taking such sample, and in case of a complaint the reserved portion alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 7; 1973 Ed., § 33-107.)

Cross references. — As to regulation of production and sale of milk and milk products, see §§ 33-301 to 33-312.

Section references. — This section is referred to in § 33-302.

§ 33-108. Interference with officials prohibited.

No person shall hinder, obstruct, or in any way interfere with any inspector, analyst, or other person of the Health Department in the performance of his duty in carrying out the provisions of this chapter. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8; 1973 Ed., § 33-108.)

Section references. — This section is referred to in § 33-302.

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of

members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 33-109. Prosecutions; violations.

All prosecutions under this chapter shall be in the Superior Court of the District of Columbia on information brought in the name of the District of Columbia and on its behalf; and any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$5 nor more than \$100. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules and regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 33-109; Oct. 5, 1985, D.C. Law 6-42, § 476, 32 DCR 4450.)

Section references. — This section is referred to in § 33-302.

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs.

The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

§ 33-110. Inconsistent acts repealed; certain Acts preserved.

All acts and parts of acts inconsistent with this chapter are hereby repealed: Provided, that nothing in this chapter contained shall be construed as modifying or repealing any of the provisions of "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886, or of "An Act defining

cheese, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of 'filled cheese,'" approved June 6, 1896. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 10; 1973 Ed., § 33-110.)

Section references. — This section is referred to in § 33-302.

References in text. — The Act of August 2, 1886, referred to near the middle of this section, was the Act of August 2, 1886, 24 Stat. 209, ch. 840.

The Act of June 6, 1896, referred to at the end of this section, was the Act of June 6, 1896, 29 Stat. 253, ch. 337.

CHAPTER 2. CANDY.

Sec.

33-201. Adulterated candy not to be made or sold.

Sec.

33-202. Violations.

33-203. Prosecutions.

§ 33-201. Adulterated candy not to be made or sold.

No person or corporation shall, by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale or knowingly sell or offer to sell any candy adulterated by the admixture of terra alba, barytes, talc, or any other mineral substance, by poisonous colors or flavors, or other ingredients deleterious or detrimental to health. (May 5, 1898, 30 Stat. 398, ch. 241, § 1; 1973 Ed., § 33-201.)

Cross references. — As to adulteration, see §§ 33-101 to 33-110.

Complaint stated good cause of action.

— A complaint alleging that the injury to the plaintiff, caused by biting a stone contained in a

confection, was caused by the defendant's breach of warranty, stated a good cause of action and would not be dismissed on motion. *Saunders v. Goldstein*, 30 F. Supp. 150 (D.D.C. 1939).

§ 33-202. Violations.

Any person or corporation convicted of violating any of the provisions of this chapter shall be punished by a fine not exceeding \$100. The candy so adulterated shall be forfeited and destroyed under the direction of the court. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules and regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (May 5, 1898, 30 Stat. 398, ch. 241, § 2; 1973 Ed., § 33-202; Oct. 5, 1985, D.C. Law 6-42, § 475, 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 33-109.

§ 33-203. Prosecutions.

It is hereby made the duty of the prosecuting attorneys of the District of Columbia to appear for the people and to attend to the prosecution of all complaints under this chapter in all the courts of said District. (May 5, 1898, 30 Stat. 398, ch. 241, § 3; 1973 Ed., § 33-203.)

CHAPTER 3. MILK, CREAM, AND ICE CREAM.

Sec.	Sec.
33-301. Production and shipment of products to conform to local standards.	33-308. Promulgation and publication of regulations or standards to protect supply.
33-302. Definitions.	33-309. Seller of products in District to determine that shipper has permit.
33-303. Permit required; renewal; application.	33-310. Violations.
33-304. Suspension of permit.	33-311. Conflicts of interest of government officers or employees.
33-305. Shipment of products into District meeting federal or state specifications.	33-312. Uniform application of examinations, inspection, and rules and regulations.
33-306. Pasteurization requirement.	
33-307. Products illegally brought into District; seizure; notice to owner; destruction.	

§ 33-301. Production and shipment of products to conform to local standards.

None but pure, clean, and wholesome milk, cream, milk products, or frozen desserts conforming to standards established by the Council of the District of Columbia, not inconsistent with standards established by the United States government, shall be produced in, or be shipped into, the District of Columbia. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-301.)

Cross references. — As to milk containers, see § 10-115.

As to authority of District to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2842 and 47-2844.

As to the registration of milk containers, see §§ 48-201 to 48-211 and 48-301 to 48-307.

Section references. — This section is referred to in §§ 33-302, 33-304, 33-305, 33-307, 33-308, and 33-310.

Purpose of chapter. — A moving consideration in the passage of this chapter was to safeguard the public health, and it is within the power of Congress, in the exercise of its police powers in the District, to say how this shall be accomplished. *Leaman v. District of Columbia*, 55 F.2d 1020 (D.C. Cir. 1932).

§ 33-302. Definitions.

As used in §§ 33-301 to 33-310:

(1) The term “person” includes firms, associations, partnerships, and corporations in addition to individuals.

(2) The term “Mayor” means the Mayor of the District of Columbia or his designated agents.

(3) The term “District” means the District of Columbia. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-302.)

Section references. — This section is referred to in §§ 33-304, 33-305, 33-307, 33-308, and 33-310.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 33-303. Permit required; renewal; application.

No person shall keep or maintain within the District a dairy farm, milk plant, or frozen dessert plant producing, as the case may be, milk, cream, milk products, or frozen desserts for sale in the District, or bring or send into the District for sale any milk, cream, milk product, or frozen dessert, without a permit so to do from the Mayor, and then only in accordance with the terms of such permit. Such permit shall be valid only for the calendar year in which it is issued, and shall be renewable annually on or before the 1st day of January of each calendar year thereafter. Application for such permit shall be in writing upon a form prescribed by the Mayor. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-303.)

Section references. — This section is referred to in §§ 33-302, 33-304, 33-305, 33-307, 33-308, and 33-310.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 33-304. Suspension of permit.

The Mayor is authorized to suspend any permit issued under the authority of §§ 33-301 to 33-310 whenever, in his opinion, the public health is endangered by the impurity or unwholesomeness of milk, cream, milk product, or frozen dessert supplied by the holder of the permit, and the suspension shall remain in force until the Mayor finds the danger no longer continues. Whenever any permit is suspended the Mayor shall in writing furnish to the holder of such permit his reasons for such suspension, and each dealer receiving milk, cream, milk product, or frozen dessert from such holder shall also be promptly notified by the Mayor in writing of the suspension of the permit. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 4; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-304.)

Cross references. — As to administrative procedure, see §§ 1-1501 to 1-1510.

As to judicial review of administrative procedure, see §§ 1-1510 and 11-722.

Section references. — This section is re-

ferred to in §§ 33-302, 33-305, 33-307, 33-308, and 33-310.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 33-305. Shipment of products into District meeting federal or state specifications.

Nothing in §§ 33-301 to 33-310 shall be construed to prohibit:

(1) The shipment into the District of milk, cream, or milk products from shipping stations or plants having a sanitation compliance and enforcement rating of 90 per centum or better as determined by a milk sanitation rating officer certified by the Secretary of Health and Human Services; or

(2) The shipment into the District of milk or cream for manufacture into frozen desserts and frozen desserts containing milk or cream which has been produced and transported in accordance with specifications established by a state or federal regulatory or certifying agency and approved by the Mayor. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-305.)

Section references. — This section is referred to in §§ 33-302, 33-304, 33-307, 33-308, and 33-310.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Department of Health, Education and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

§ 33-306. Pasteurization requirement.

No milk, cream, milk product, or frozen dessert shall be sold or offered for sale to a consumer in the District unless it has been pasteurized by a method acceptable to the Secretary of Health and Human Services. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 6; Aug. 1, 1950, 64 Stat. 1005, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-306.)

Section references. — This section is referred to in §§ 33-302, 33-304, 33-305, 33-307, 33-308, and 33-310.

Transfer of functions. — The functions of the Department of Health, Education and Welfare were transferred to the Department of

Health and Human Services by the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

§ 33-307. Products illegally brought into District; seizure; notice to owner; destruction.

The Mayor is authorized to seize all milk, cream, milk products, or frozen desserts which may be brought into the District in violation of the provisions of §§ 33-301 to 33-310. The owner of any such milk, cream, milk product, or frozen dessert shall immediately be notified of such seizure, and if he shall fail within 24 hours from the time such notice is given to him to remove or cause to be removed from the District the seized milk, cream, milk product, or frozen dessert, the Mayor is authorized to destroy or otherwise dispose of it. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 7; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-307.)

Cross references. — As to return of property by Property Clerk, see § 4-157.

Section references. — This section is referred to in §§ 33-302, 33-304, 33-305, 33-308, and 33-310.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 33-308. Promulgation and publication of regulations or standards to protect supply.

The Council of the District of Columbia is hereby authorized to make from time to time all such reasonable regulations or standards consistent with §§ 33-301 to 33-310 as it deems necessary to protect the milk, cream, milk product, and frozen dessert supply of the District. Such regulations or standards shall be published once in a daily newspaper of general circulation in the District at least 30 days before any penalty may be exacted for violation thereof. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 8; Jan. 5, 1971, 84 Stat. 1938, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-308.)

Cross references. — As to rules and regulations for protection of life, health, and property, see § 1-319.

As to authority of Council to regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47-2842 and 47-2844.

Section references. — This section is referred to in §§ 33-302, 33-304, 33-305, 33-307, and 33-310.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (259, 260, 261) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the

Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were re-

placed by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 33-309. Seller of products in District to determine that shipper has permit.

No person in the District shall sell or offer for sale any milk, cream, milk product, or frozen dessert from any source until he shall have first determined that the person providing such milk, cream, milk product, or frozen dessert holds a permit from the Mayor to ship milk, cream, milk products, or frozen desserts into the District. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1938, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-309.)

Section references. — This section is referred to in §§ 33-302, 33-304, 33-305, 33-307, 33-308, and 33-310.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section does not prohibit importation of milk which is sold outside District of Columbia. *Embassy Dairy, Inc. v. Camalier*, 211 F.2d 41 (D.C. Cir. 1954).

§ 33-310. Violations.

Any person who violates any provision of §§ 33-301 to 33-310 or the regulations or standards promulgated hereunder shall be punished by a fine of not more than \$300 or imprisonment for not more than 30 days, or both. Prosecution shall be conducted in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any of his assistants. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of §§ 33-301 to 33-310, or any rules or regulations issued under the authority of §§ 33-301 to 33-310, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of §§ 33-301 to 33-310 shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 10; Jan. 5, 1971, 84 Stat. 1938, Pub. L. 91-650, title VI, § 601(a); 1973 Ed., § 33-310; Oct. 5, 1985, D.C. Law 6-42, § 427, 32 DCR 4450.)

Section references. — This section is referred to in §§ 33-302, 33-304, 33-305, 33-307, and 33-308.

Legislative history of Law 6-42. — See note to § 33-109.

Cited in *Embassy Dairy, Inc. v. Camalier*, 211 F.2d 41 (D.C. Cir. 1954).

§ 33-311. Conflicts of interest of government officers or employees.

No officer or employee of the Department of Human Services shall, during his continuance in office, serve in his private capacity, for fee, gift, or reward, any person licensed to keep or maintain a dairy or dairy farm in said District or to bring or to send milk into said District, or any person who has applied or is about to apply for such license, or any manufacturer or dealer in foods, drugs, or disinfectants, or similar materials: Provided further, that every place where milk is sold shall be deemed a dairy under the law for purposes of inspection. (Mar. 2, 1907, 34 Stat. 1145, ch. 2510, § 1; 1973 Ed., § 33-320.)

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior

to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 33-312. Uniform application of examinations, inspection, and rules and regulations.

The examinations, inspection, and rules and regulations concerning the milk supply of the District of Columbia shall be applied alike to each state shipping milk into said District. (Mar. 3, 1915, 38 Stat. 915, ch. 80, § 1; 1973 Ed., § 33-321.)

Cross references. — As to shipments of dairy products into District, see § 33-305.

CHAPTER 4. MEATS AND MEAT PRODUCTS.

Sec.

33-401. Sale of horse meat and horse meat product — Labeling; notification to consumer.

Sec.

33-402. Same — Council authorized to make regulations.

33-403. Same — Violations.

§ 33-401. Sale of horse meat and horse meat product — Labeling; notification to consumer.

After 30 days after July 3, 1943, it shall be unlawful for any person, firm, or corporation, or any officer, agent, or employee thereof, to sell or offer for sale within the District of Columbia to any person any horse meat or food product thereof unless such meat or food product is plainly and conspicuously labeled, marked, branded, or tagged "horse meat" or "horse meat product," as the case may be, or, in the case of any horse meat or food product thereof which is sold or offered for sale to any consumer at a hotel, restaurant, or similar establishment, unless such consumer is notified that the food which he receives contains horse meat or food products thereof. (July 3, 1943, 57 Stat. 372, ch. 188, § 1; 1973 Ed., § 33-501.)

Cited in *United States v. Rogers*, 115 WLR 221 (Super. Ct. 1987); *West v. United States*, App. D.C., 659 A.2d 1260 (1995).

§ 33-402. Same — Council authorized to make regulations.

The Council of the District of Columbia, subject to the approval of the Mayor of the District of Columbia, is authorized to make such regulations as may be necessary to carry out the purposes of this chapter. (July 3, 1943, 57 Stat. 372, ch. 188, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 33-502.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see *Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization* in Volume 1). Section 402(263) of Reorganization Plan No. 3 of 1967 (see *Reorganization Plans* in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 33-403. Same — Violations.

Any person who willfully violates any provision of this chapter, or any regulation prescribed thereunder, shall, upon conviction thereof, be fined not more than \$500, or imprisoned for not more than one year, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the

authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (July 3, 1943, 57 Stat. 372, ch. 188, § 2; 1973 Ed., § 33-503; Oct. 5, 1985, D.C. Law 6-42, § 445, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second read-

ings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

CHAPTER 5. CONTROLLED SUBSTANCES.

Subchapter I. Definitions.

Sec.

33-501. Definitions.

Subchapter II. Standards and Schedules.

33-511. Administration.
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Subchapter III. Regulation of Manufacture, Distribution, and Dispensing.

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 33-532. Registration — Required; renewal; exceptions; waiver; inspection.
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Sec.

33-547.1. Drug free zones.
 33-548. Second or subsequent offenses.
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Subchapter V. Enforcement and Administrative Provisions.

33-551. Cooperative arrangements; confidentiality.
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Subchapter VI. Miscellaneous.

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Subchapter VII. Drug Interdiction and Demand Reduction Fund.

33-571. Establishment of Fund.
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Subchapter VIII. Anti-Loitering / Drug Free Zone.

33-581. Definitions.
 33-582. Procedure for establishing a drug free zone.
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 33-584. Prohibition.
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Revision of chapter. — D.C. Law 4-29 enacted the District of Columbia Uniform Controlled Substances Act of 1981. D.C. Law 4-29 repealed former §§ 33-501, 33-503 to 33-513, 33-515 to 33-520, 33-521(a), (c) through (g), and 33-522 to 33-526, redesignated former §§ 33-502, 33-514, and 33-521 as present §§ 33-564, 33-565, and 33-566, respectively, and enacted present §§ 33-501, 33-511 to 33-523, 33-531 to 33-539, 33-541 to 33-550, 33-551 to 33-557, and

33-561 to 33-563. Former § 33-509 had been amended by D.C. Law 4-25.

Former §§ 33-501 to 33-526 as they existed prior to the revision of this chapter by D.C. Law 4-29, were part of the Uniform Narcotic Drug Act, approved June 20, 1938 (52 Stat. 785). D.C. Law 4-29 also repealed, inter alia, the provisions of former chapter 6 of this title, the

Dangerous Drug Act for the District of Columbia, approved July 24, 1956 (70 Stat. 612).

Subchapter I. Definitions.

§ 33-501. Definitions.

As used in this chapter, the term:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) A practitioner (or, in the practitioner's presence, by the practitioner's authorized agent); or

(B) The patient or research subject at the direction of and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term "agent" does not include a common or contract carrier, a public warehouseman, or an employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

(3) "Cannabis" means all parts of the plant genus *Cannabis*, including both marijuana and hashish defined as follows:

(A) "Marijuana" includes the leaves, stems, flowers, and seeds of all species of the plant genus *Cannabis*, whether growing or not. The term "marijuana" does not include the resin extracted from any part of the plant, nor any compound, manufacture, salt, derivative, mixture, or preparation from the resin, including hashish and does not include the mature stalks of the plant, fiber produced from such stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(B) "Hashish" includes the resin extracted from any part of the plant genus *Cannabis*, and every compound, manufacture, salt, derivative, mixture, or preparation from such resin.

(4) "Controlled substance" means a drug, substance, or immediate precursor, as set forth in Schedules I through V of subchapter II of this chapter.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) "D.E.A." means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(7) "Dispense" means to distribute a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser" means a practitioner who dispenses.

(9) “Distribute” means the actual, constructive, or attempted transfer from one person to another other than by administering or dispensing of a controlled substance, whether or not there is an agency relationship.

(10) “Distributor” means a person who distributes.

(11) “Drug” means: (A) substances recognized as drugs in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; (B) active substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (C) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (D) substances intended for use as a component of any article specified in clause (A), (B), or (C) of this paragraph. The term “drug” does not include devices or their components, parts, or accessories.

(12) “Immediate precursor” means a substance which the Mayor has found to be, and by rule designates as being, the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term “manufacture” does not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(A) By a practitioner as an incident to administering or dispensing a controlled substance in the course of the practitioner’s professional practice; or

(B) By a practitioner, or by his or her authorized agent under supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(14) “Mayor” means the Mayor as provided for in § 1-241, or the Mayor’s designated agent.

(15) “Narcotic drug” means any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, its phenanthrene alkaloids, and their derivatives (except isoquiniline alkaloids of opium);

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;

(C) Opium poppy and poppy straw;

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and

(F) Any compound, mixture, or preparation that contains any of the substances referred to in this paragraph.

(16) "Opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability and includes its racemic and levorotatory forms. The term "opiate" does not include, unless specifically designated as controlled under § 33-511, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).

(17) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(18) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or unincorporated business, or any other legal entity.

(19) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20) "Practitioner" means:

(A) A physician, dentist, advanced practice registered nurse, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in the District of Columbia; or

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of its professional practice or research in the District of Columbia.

(21) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) "State" when applied to a part of the United States, includes any state, the District of Columbia, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States government.

(23) "Ultimate user" means a person who lawfully possesses a controlled substance for that person's own use or for the use of a member of that person's household or for administering to an animal owned by him or her or by a member of that person's household.

(24) "Addict" means any individual who habitually uses any narcotic drug or abusive drug so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such narcotic drug or abusive drug as to have lost the power of self-control with reference to his addiction.

(25) "Retail value" means the value in the market in which the substance was being distributed, manufactured or possessed, or the amount which the person possessing such controlled substance reasonably could have expected to receive upon the sale of the controlled substance at the time and place where the controlled substance was distributed, manufactured or possessed.

(26) "Abusive drug" means any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

- (A) Phencyclidine or a phencyclidine immediate precursor;
- (B) Methamphetamine, its salts, isomers, and salts of its isomers; and
- (C) Phenmetrazine and its salts.

(27) "Isomer" means the optical isomer, except as used in § 33-514(3) and § 33-516(1)(D). As used in § 33-514(3), "isomer" means any optical, positional, or geometric isomer. As used in § 33-516(1)(D), "isomer" means any optical or geometric isomer.

(28) "Real property" means any right, title, or interest in any tract of land, or any appurtenance or improvement on a tract of land.

(29) "Playground" means any facility intended for recreation, open to the public, and with any portion of the facility that contains one or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards.

(30) "Video arcade" means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines.

(31) "Youth center" means any recreational facility or gymnasium, including any parking lot appurtenant thereto, intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities. (Aug. 5, 1981, D.C. Law 4-29, § 102, 28 DCR 3081; Mar. 9, 1983, D.C. Law 4-166, § 8, 30 DCR 1082; Feb. 28, 1987, D.C. Law 6-201, § 2(a), (b), 34 DCR 524; Oct. 19, 1989, D.C. Law 8-50, § 2(a), 36 DCR 5792; June 13, 1990, D.C. Law 8-138, § 2(a), 37 DCR 2638; Mar. 21, 1995, D.C. Law 10-229, § 2(a), 42 DCR 9; Mar. 23, 1995, D.C. Law 10-247, § 4, 42 DCR 457; Apr. 18, 1996, D.C. Law 11-110, § 34(a), 43 DCR 530.)

Cross references. — As to exceptions from application of good time credits, see § 24-434.

As to drug house abatement, see § 22-2713.

Section references. — This section is referred to in §§ 3-603, 22-2713, 23-1321, 24-434, 25-127.1, 33-601, and 45-2559.1.

Effect of amendments. — D.C. Law 11-110 validated a previously made substitution of "contains" for "contain" in (30).

Legislative history of Law 4-29. — Law 4-29, the "District of Columbia Uniform Controlled Substances of 1981," was introduced in Council and assigned Bill No. 4-123, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-166. — Law 4-166 was submitted to the electors of the District of Columbia on September 14, 1982, as

Initiative No. 9. The results of the voting, certified by the Board of Elections and Ethics on October 12, 1982, were 84,012 for the Initiative and 32,333 against the Initiative. It was transmitted to Congress for review on October 21, 1982 and resubmitted due to the Congressional adjournment sine die on January 6, 1983. Prior to its publication in the D.C. Register on March 9, 1983, emergency legislation delayed the implementation of Law 4-166. This emergency legislation, Act 5-10, provided that the provisions of this initiative shall not be applied to any person until June 7, 1983, the expiration of the District of Columbia Mandatory-Minimum Sentences Initiative of 1981 Delayed Effectiveness Amendments Emergency Act of 1983.

Legislative history of Law 6-201. — Law 6-201 was introduced in Council and assigned Bill No. 6-455, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 25,

1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-260 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-50. — Law 8-50 was introduced in Council and assigned Bill No. 8-295. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-83 and transmitted to both Houses of Congress for its review. D.C. Law 8-50 became effective on October 19, 1989.

Legislative history of Law 8-138. — See note to § 33-543a.

Legislative history of Law 10-229. — Law 10-229, the "Youth Facilities Drug Free Zone Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-506, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-370 and transmitted to both Houses of Congress for its review. D.C. Law 10-229 became effective on March 21, 1995.

Legislative history of Law 10-247. — Law 10-247, the "Health Occupations Revision Act of 1985 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-589, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Vetoed by the Mayor on December 28, 1994, Council overrode the veto on January 17, 1995, and the Bill was assigned Act No. 10-394 and transmitted to both Houses of Congress for its review. D.C. Law 10-247 became effective on March 23, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Mayor to implement public information program. — Section 5 of D.C. Law 8-138 provided that within 10 days of June 13, 1990, the Mayor shall implement an extensive public information program to detail the new penalty structure established under this act.

Drug house abatement. — Section 2(a) of D.C. Law 12-xxx (D.C. Act 12-261) provided that whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place which is resorted to

by persons using controlled substances in violation of § 33-501 et seq., for the purpose of using any of these substances or for the purpose of keeping or selling any of these substances in violation of the Controlled Substances Act of 1981, is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such activity is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, and contents thereof, are also declared a nuisance and disorderly house, and shall be enjoined and abated as hereinafter provided.

Delegation of authority pursuant to Law 4-29. — See Mayor's Order 85-171, October 18, 1985, as amended by Mayor's Order 87-121, May 27, 1987.

"Addict." — To meet her burden of proof, the defendant must relate her habitual use of drugs to the endangerment of the public or to the loss of self-control with reference to her addiction. *Dupree v. United States*, App. D.C., 583 A.2d 1000 (1990).

For a defendant to establish that he is an addict, he must show that he comes within the applicable definition of addict as set forth in paragraph (24). In addition, a defendant must prove that the primary purpose for the commission of the offense with which he is charged was to enable the defendant to obtain a narcotic drug he required because of his addiction. *Stroman v. United States*, App. D.C., 606 A.2d 767 (1992).

Chapter obviates need to prove THC content in "marijuana." — This chapter, by proscribing possession of all species of marijuana, obviates the need specifically to prove tetrahydrocannabinol (THC) content, since a finding that plant material is "marijuana" is tantamount to a finding that the material contains THC. *Craig v. United States*, App. D.C., 490 A.2d 1173 (1985).

Hashish is Schedule II controlled substance. — Although cannabis is listed as a Schedule V controlled substance and is defined under paragraph (3) of this section as including both marijuana and hashish, the separate listing of hashish in Schedule II indicates a clear legislative intent to include hashish as a Schedule II controlled substance. *Lawrence v. United States*, App. D.C., 473 A.2d 373 (1984).

Cocaine use not included in definition of addict prior to amendment. — See *Backman v. United States*, App. D.C., 516 A.2d 923 (1986).

Distribution includes attempted transfer. — An attempted transfer is punishable as if it were a completed act of distribution. *Allen v. United States*, App. D.C., 580 A.2d 653 (1990).

"Distribution" includes non-sale transfers. — This section on its face does not define "distribution" in terms of a sale of narcotics; the

language instead proscribes a broader range of conduct, i.e., any act effecting the transfer of narcotics from one person to another. *Minor v. United States*, App. D.C., 623 A.2d 1182 (1993).

Dentists. — A dentist who deals with controlled substances must obtain two forms of government authorizations: First, the dentist needs a license to practice dentistry, renewable annually by the Board of Dentistry; Second, the dentist must obtain an annual registration, issued by the Department of Consumer and Regulatory Affairs as the delegee of the Mayor, to dispense controlled substances. Both the license and the registration are subject to summary suspension and permanent suspension or revocation proceedings. *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

Sentencing alternative. — Commitment to treatment under Narcotic Addicts Rehabilitation Act of 1966, 18 U.S.C. §§ 4251-55 (1985), (repealed effective November 1, 1987, with sections applicable for five years after repeal to individuals who committed offense or act of juvenile delinquency prior to November 1, 1987) remains a sentencing alternative for a defendant-addict who has been convicted under this chapter but is ineligible for addict exception of this chapter because of a previous drug-

related conviction. *McConnell v. United States*, App. D.C., 537 A.2d 211 (1988).

Cited in *Whyte v. United States*, App. D.C., 471 A.2d 1018 (1984); *Gardiner v. District of Columbia*, App. D.C., 499 A.2d 455 (1985); *United States v. Edelen*, App. D.C., 529 A.2d 774 (1987); *District of Columbia v. \$987.00 in U.S. Currency*, 115 WLR 1393 (Super. Ct. 1987); *United States v. Peterkin*, 115 WLR 2133 (Super. Ct. 1987); *Williams v. United States*, App. D.C., 552 A.2d 1255 (1988); *Chambers v. United States*, App. D.C., 564 A.2d 26 (1989); *Patterson v. District of Columbia*, 117 WLR 741 (Super. Ct. 1989); *District of Columbia v. Sellers*, 117 WLR 1017 (Super. Ct. 1989); *Arrington v. United States*, App. D.C., 585 A.2d 1342 (1991); *Malloy v. United States*, App. D.C., 605 A.2d 59 (1992); *Johnson v. United States*, App. D.C., 611 A.2d 41 (1992); *Long v. United States*, App. D.C., 623 A.2d 1144 (1993); *Thomas v. United States*, App. D.C., 650 A.2d 183 (1994); *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995); *Holiday v. United States*, App. D.C., 683 A.2d 61 (1996), cert. denied, — U.S. —, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997); *United States v. Esparza*, 124 WLR 1553 (Super. Ct. 1996); *Hicks v. United States*, App. D.C., 697 A.2d 805 (1997).

Subchapter II. Standards and Schedules.

§ 33-511. Administration.

(a) The Mayor shall administer this chapter and, with provision for public notice and comment, may add substances to or delete or reschedule all substances enumerated in the schedules in § 33-514, § 33-516, § 33-518, § 33-520 or § 33-522 pursuant to subchapter I of Chapter 15 of Title 1 and pursuant to the procedures set forth in this chapter. In making a determination regarding a substance, the Mayor shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychological or physiological dependence; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

(b)(1) After considering the factors enumerated in subsection (a) of this section and after complying with subchapter I of Chapter 15 of Title 1, the Mayor shall make findings with respect to the factors and issue a proposed rule either controlling the substance if the Mayor finds that the substance has a

potential for abuse or deleting the substance if the Mayor finds that the substance does not have a potential for abuse.

(2) The Mayor shall transmit the proposed rule to the Council of the District of Columbia and if the Council of the District of Columbia does not, within 60 days, adopt a resolution disapproving the proposed rule, then the proposed rule shall become effective.

(3) The 60 days for Council review shall not include days that pass during a recess of the Council.

(4) The Council of the District of Columbia may, by resolution, approve the proposed rule before the end of the 60-day period and it shall become effective upon that date.

(5) The rule shall be published by the Mayor in the District of Columbia Register upon its becoming effective.

(c) If the Mayor designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law, the Mayor may similarly propose to control or delete the substance under this chapter pursuant to subsections (a) and (b) of this section.

(e) Authority to control under this section does not extend to tobacco or to distilled spirits, wine, or malt beverages, as those terms are defined or used in § 25-103. (Aug. 5, 1981, D.C. Law 4-29, § 201, 28 DCR 3081; Aug. 1, 1985, D.C. Law 6-15, § 5, 32 DCR 3570.)

Section references. — This section is referred to in §§ 33-501, 33-514, 33-518, 33-520, and 33-522.

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Editor's notes. — Pursuant to subsection (b), sufentanil was added to the list of enumerated controlled substances in Schedule II, appearing in subparagraph (A) of paragraph (1) of

§ 33-516, by an order published upon adoption of the rule in 32 DCR 1097.

Pursuant to subsection (b), buprenorphine was rescheduled from schedule II to Schedule V of enumerated controlled substances appearing in § 33-522, by an order published upon adoption of the rule in 33 DCR 6908.

Pursuant to subsection (b), loperamide was deleted from Schedule V appearing in § 33-522 (3) by an order published upon adoption of the rule in 34 DCR 4370.

Cited in *Whyte v. United States*, App. D.C., 471 A.2d 1018 (1984); *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990); *Arrington v. United States*, App. D.C., 585 A.2d 1342 (1991); *Hicks v. United States*, App. D.C., 697 A.2d 805 (1997).

§ 33-512. Nomenclature.

The controlled substances listed or to be listed in the schedules in §§ 33-514, 33-516, 33-518, 33-520 and 33-522 are included by whatever official, common, usual, chemical, or trade name designated. (Aug. 5, 1981, D.C. Law 4-29, § 202, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-513. Schedule I tests.

The Mayor shall place a substance in Schedule I if the Mayor finds that the substance:

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or in the District of Columbia or lacks accepted safety for use in treatment under medical supervision. (Aug. 5, 1981, D.C. Law 4-29, § 203, 28 DCR 3081.)

Legislative history of Law 4-29. — See **Cited in** Arrington v. United States, App. D.C., 585 A.2d 1342 (1991).
note to § 33-501.

§ 33-514. Schedule I enumerated.

The controlled substances listed in this section are included in Schedule I, unless and until removed therefrom pursuant to § 33-511:

(1) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (A) Acetylmethadol;
- (B) Allylprodine;
- (C) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alphaacetylmethadol, levomethadyl, acetate, or LAAM);
- (D) Alphameprodine;
- (E) Alphamethadol;
- (F) Benzethidine;
- (G) Betacetylmethadol;
- (H) Betameprodine;
- (I) Betamethadol;
- (J) Betaprodine;
- (K) Clonitazene;
- (L) Dextromoramide;
- (M) Diampromide;
- (N) Diethylthiambutene;
- (O) Difenoxin;
- (P) Dimenoxadol;
- (Q) Dimepheptanol;
- (R) Dimethylthiambutene;
- (S) Dioxaphetylbutyrate;
- (T) Dipipanone;
- (U) Ethylmethylthiambutene;
- (V) Etonitazene;
- (W) Etoxidine;
- (X) Furethidine;
- (Y) Hydroxypethidine;

(Z) Ketobemidone;
(AA) Levomoramide;
(BB) Levophenacylmorphane;
(CC) Morpheridine;
(DD) Noracymethadol;
(EE) Norlevorphanol;
(FF) Normethadone;
(GG) Norpipanone;
(HH) Phenadoxone;
(II) Phenampromide;
(JJ) Phenomorphane;
(KK) Phenoperidine;
(LL) Piritramide;
(MM) Proheptazine;
(NN) Properidine;
(OO) Propiram;
(PP) Racemoramide;
(QQ) Thiophene;
(RR) Trimeperidine;
(SS) Acetyl-Alpha-Methylfentanyl;
(TT) Alphe-methylfentanyl;
(UU) Alpha-Methylthiofentanyl;
(VV) Beta-hydroxyfentanyl;
(WW) Beta-hydroxy-3-Methylfentanyl;
(XX) 3-Methylfentanyl;
(YY) 3-Methylthiofentanyl;
(ZZ) MPPP;
(AAA) Para-fluorofentanyl;
(BBB) PEPAP;
(CCC) Thiofentanyl; and
(DDD) Tilidine;

(2) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;
(B) Acetyldihydrocodeine;
(C) Benzylmorphine;
(D) Codeine methylbromide;
(E) Codeine-N-Oxide;
(F) Cyprenorphine;
(G) Desomorphine;
(H) Dihydromorphine;
(I) Drotepanol;
(J) Etorphine (except hydrochloride salt);
(K) Diacetylated morphine (heroin);
(L) Hydromorphenol;

- (M) Methyl-desorphine;
- (N) Methyl-dihydromorphine;
- (O) Morphine methylbromide;
- (P) Morphine methylsulfonate;
- (Q) Morphine-N-Oxide;
- (R) Myrophine;
- (S) Nicocodeine;
- (T) Nicomorphine;
- (U) Normorphine;
- (V) Pholcodine; and
- (W) Thebacon;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, its salts, isomers and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

- (A) 4-bromo-2, 5-dimethoxyamphetamine;
- (B) 2, 5 dimethoxyamphetamine;
- (C) 4-methoxyamphetamine;
- (D) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (E) 4-methyl-2, 5-dimethoxyamphetamine;
- (F) 3, 4-methylenedioxy amphetamine;
- (G) 3, 4, 5-trimethoxy amphetamine;
- (H) Bufotenine;
- (I) Diethyltryptamine;
- (J) Dimethyltryptamine;
- (K) Ethylamide analog of phencyclidine, PCE;
- (L) Ibogaine;
- (M) Lysergic acid diethylamide;
- (N) Mescaline;
- (O) Peyote;
- (P) N-ethyl-3-piperidyl benzilate;
- (Q) N-methyl-3-piperidyl benzilate;
- (R) Psilocybin;
- (S) Psilocyn;
- (T) Pyrrolidine analog of phencyclidine, PCPY;
- (U) Thiophene analog of phencyclidine;
- (V) 3-4 Methylenedioxyamphetamine; and
- (W) Parahexyl;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Mecloqualone; and

(B) Methaqualone; and

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(A) Fenethyline; and

(B) N-ethylamphetamine. (Aug. 5, 1981, D.C. Law 4-29, § 204, 28 DCR 3081; amended by rule 39 DCR 1882; amended by rule, Dec. 7, 1994, 41 DCR 7967.)

Section references. — This section is referred to in §§ 32-1601, 33-501, 33-511, 33-512, and 45-2559.1.

Legislative history of Law 4-29. — See note to § 33-501.

"Unless listed in another schedule" means "unless more specifically listed in another schedule." Carpenter v. United States, App. D.C., 475 A.2d 369 (1984).

Heroin hydrochloride as Schedule I substance. — As long as a substance may be accurately described as a salt of heroin it falls within the Schedule I classification, notwithstanding the argument that it might also be a salt of opium and should therefore fall within a lower classification. Carpenter v. United States, App. D.C., 475 A.2d 369 (1984).

Amendment of indictment. — Where the indictment charged defendant with possession

with the intent to distribute a controlled substance/heroin, but the trial court allowed the prosecution to proceed with the understanding that the controlled substance was cocaine (a substance which has notably different properties and legal consequences from heroin), the trial court constructively amended the indictment in violation of the defendant's Fifth Amendment right to be tried only on charges contained in the grand jury's indictment. Wooley v. United States, App. D.C., 697 A.2d 777 (1997).

Cited in Finney v. United States, App. D.C., 527 A.2d 733 (1987); Harris v. Harris, 118 WLR 1977 (Super. Ct. 1990); Thomas v. United States, App. D.C., 650 A.2d 183 (1994); Robinson v. United States, App. D.C., 697 A.2d 787 (1997).

§ 33-515. Schedule II tests.

The Mayor shall place a substance in Schedule II if the Mayor finds that:

(1) The substance has high potential for abuse;

(2) The substance has currently accepted medical use in treatment in the United States or the District of Columbia, or currently accepted medical use, with severe restrictions; and

(3) The abuse of the substance may lead to severe psychological or physical dependence. (Aug. 5, 1981, D.C. Law 4-29, § 205, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Cited in Arthur v. District of Columbia Nurses' Examining Bd., App. D.C., 459 A.2d 141 (1983); Arrington v. United States, App.

D.C., 585 A.2d 1342 (1991); Wooley v. United States, App. D.C., 697 A.2d 777 (1997); Robinson v. United States, App. D.C., 697 A.2d 787 (1997).

§ 33-516. Schedule II enumerated.

The controlled substances listed in this section are included in Schedule II unless and until removed therefrom pursuant to § 33-511:

(1) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid extracts;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine Hydrochloride;
- (x) Hydrocodone;
- (xi) Metopon;
- (xii) Morphine;
- (xiii) Oxycodone;
- (xiv) Oxymorphone;
- (xv) Thebaine;
- (xvi) Hydromorphone;
- (xvii) Dihydrocodeine;
- (xviii) Sufentanil;
- (xix) Alfentanil; and
- (xx) Carfentanil;

(B) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (A) of this paragraph, but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves, except coca leaves or extracts of coca leaves from which cocaine, ecgonine, or derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; or any compound, mixture, or preparation that contains any substance referred to in this paragraph;

(E) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy);

(F) Hashish; and

(G) Synthetic Tetrahydrocannabinols: Chemical equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

(ii) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; or

(iii) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (compounds of these structures, regardless of numerical designation of atomic positions covered);

(2) Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan excepted:

- (A) Alphaprodine;
- (B) Anileridine;
- (C) Bezitramide;
- (D) Biphentamine;
- (E) Diphenoxylate;
- (F) Eskatrol;
- (G) Fentanyl;
- (H) Fetamine;
- (I) Isomethadone;
- (J) Levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
- (K) Levomethorphan;
- (L) Levorphanol;
- (M) Metazocine;
- (N) Methadone;
- (O) Methadone — Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (P) Moramide — Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (Q) Pethidine (meperidine);
- (R) Pethidine — Intermediate — A, 4-cyano-1-methyl-4-phenylpiperidine;
- (S) Pethidine — Intermediate — B, ethyl-4-phenylpiperidine-4-carboxylate;
- (T) Pethidine — Intermediate — C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (U) Phenazocine;
- (V) Piminodine;
- (W) Racemethorphan; and
- (X) Racemorphan;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (B) Methamphetamine, its salts, isomers, and salts of its isomers;
- (C) Phenmetrazine and its salts;
- (D) Methylphenidate and its salts; and
- (E) Repealed.
- (F) Amphetamine/methamphetamine immediate precursor: Phenyl acetone (Phenyl-2-propanone), P2P; and

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of

the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Methagualone;
- (B) Amobarbital;
- (C) Secobarbital;
- (D) Pentobarbital;
- (E) Phencyclidine;
- (F) Phencyclidine immediate precursors:
 - (i) 1-phenyleyclohexylamine
 - (ii) 1-piperidinocyclohexanecarbonitrile (PCC);
- (G) Dronabianol;
- (H) Nabilone; and
- (I) Glutethimide. (Aug. 5, 1981, D.C. Law 4-29, § 206, 28 DCR 3081;

amended by rule, 32 DCR 1097; June 13, 1990, D.C. Law 8-138, § 2(b), 37 DCR 2638; amended by rule, 39 DCR 1882; amended by rule, Dec. 7, 1994, 41 DCR 7967.)

Section references. — This section is referred to in §§ 32-1601, 33-501, 33-511, 33-512, and 33-541.

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 8-50. — See note to § 33-501.

Legislative history of Law 8-138. — See note to § 33-543a.

Mayor to implement public information program. — See note to § 33-501.

Hashish is Schedule II controlled substance. — Although cannabis is listed as a Schedule V controlled substance and is defined under § 33-501(3) as including both marijuana and hashish, the separate listing of hashish in Schedule II indicates a clear legislative intent to include hashish as a Schedule II controlled substance. *Lawrence v. United States*, App. D.C., 473 A.2d 373 (1984).

“Unless listed in another schedule” means “unless more specifically listed in another schedule.” *Carpenter v. United States*, App. D.C., 475 A.2d 369 (1984).

Amendment of indictment. — Where the indictment charged defendant with possession with the intent to distribute a controlled substance/heroin, but the trial court allowed the prosecution to proceed with the understanding that the controlled substance was cocaine (a substance which has notably different properties and legal consequences from heroin), the trial court constructively amended the indictment in violation of the defendant's Fifth

Amendment right to be tried only on charges contained in the grand jury's indictment. *Wooley v. United States*, App. D.C., 697 A.2d 777 (1997).

Burden of proof. — The government is not required to prove a measurable amount of the active ingredient, cocaine; it is sufficient to sustain a conviction if the government proves a measurable amount of a mixture containing cocaine. *Hicks v. United States*, App. D.C., 697 A.2d 805 (1997).

Consecutive sentences imposed for possession of marijuana laced with phencyclidine. — The trial court did not err in imposing consecutive sentences for possession of marijuana laced with phencyclidine since the possession of each prohibited substance is a separate offense. *Corbin v. United States*, App. D.C., 481 A.2d 1301 (1984).

Cited in *Arthur v. District of Columbia Nurses' Examining Bd.*, App. D.C., 459 A.2d 141 (1983); *Allen v. United States*, App. D.C., 496 A.2d 1046 (1985); *Jones v. District of Columbia Dep't of Emp. Servs.*, App. D.C., 553 A.2d 645 (1989); *District of Columbia v. Sellers*, 117 WLR 1017 (Super. Ct. 1989); *District of Columbia v. Washington*, 118 WLR 1573 (Super. Ct. 1990); *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990); *Arrington v. United States*, App. D.C., 585 A.2d 1342 (1991); *Thomas v. United States*, App. D.C., 650 A.2d 183 (1994); *Robinson v. United States*, App. D.C., 697 A.2d 787 (1997).

§ 33-517. Schedule III tests.

The Mayor shall place a substance in Schedule III if the Mayor finds that:

- (1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) The substance has currently accepted medical use in treatment in the United States or the District of Columbia; and
- (3) The abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. (Aug. 5, 1981, D.C. Law 4-29, § 207, 28 DCR 3081.)

Legislative history of Law 4-29. — See D.C., 585 A.2d 1342 (1991); *Wooley v. United States*, App. D.C., 697 A.2d 777 (1997).
note to § 33-501.

Cited in *Arrington v. United States*, App.

§ 33-518. Schedule III enumerated.

(a) The controlled substances listed in this section are included in Schedule III, unless and until removed therefrom pursuant to § 33-511:

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under § 1308.32 of the Code of Federal Regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

- (B) Benzphetamine;
- (C) Chlorphentermine;
- (D) Chlortermine;
- (E) Mazindol; and
- (F) Phendimetrazine;

(2) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing: (i) Amobarbital; (ii) Secobarbital; (iii) Pentobarbital; or any salt thereof and 1 or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing: (i) Amobarbital; (ii) Secobarbital; or (iii) Pentobarbital; or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid:

- (i) Chlorhexadol;

- (ii) Rescheduled to Schedule II;
- (iii) Lysergic acid;
- (iv) Lysergic acid amide;
- (v) Methyprylon;
- (vi) Sulfondiethylmethane;
- (vii) Sulfonethylmethane;
- (viii) Sulfonmethane;
- (ix) Tiletamine & Zolazepam Combination Product; and
- (x) Vinbarbital;

(3) Nalorphine;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a 4-fold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, drug, or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progesterons, and corticosteroids) that promotes muscle growth and includes:

- (A) Boldenone;
- (B) Chlortestosterone (4-chlortestosterone);
- (C) Clostebol;
- (D) Dehydrochlormethyltestosterone;
- (E) Dihydrotestosterone (4-dihydrotestosterone);

- (F) Drostanolone;
- (G) Ethylestrenol;
- (H) Fluoxymestorone;
- (I) Formebolone (formebolone);
- (J) Mesterolone;
- (K) Methandienone;
- (L) Methandranone;
- (M) Methandriol;
- (N) Methandrostenolone;
- (O) Methenolone;
- (P) Methyltestosterone;
- (Q) Mibolerone;
- (R) Nandrolone;
- (S) Norethandrolone;
- (T) Oxandrolone;
- (U) Oxymesterone;
- (V) Oxymetholone;
- (W) Stanolone;
- (X) Stanozolol;
- (Y) Testolactone;
- (Z) Testosterone;
- (AA) Trenbolone; and

(BB) Any salt, ester or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by Secretary of Health and Human Services for such administration. If any person prescribes, dispenses or distributes such steroid for human use such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph.

(b) The Mayor may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system. (Aug. 5, 1981, D.C. Law 4-29, § 208, 28 DCR 3081; amended by rule, 39 DCR 1882; amended by rule Dec. 7, 1994 41 DCR 7967.)

Section references. — This section is referred to in §§ 32-1601, 33-511, and 33-512.

Legislative history of Law 4-29. — See note to § 33-501.

Constitutionality. — Since Schedule II was published listing the controlled substances underlying the defendant's convictions, there was no risk of lack of notice of violative conduct; nor

does this chapter vest the police with unreasonable discretion. Therefore, this chapter was not unconstitutionally vague. *Arrington v. United States*, App. D.C., 585 A.2d 1342 (1991).

"Unless listed in another schedule" means "unless more specifically listed in another schedule." *Carpenter v. United States*, App. D.C., 475 A.2d 369 (1984).

Cited in Harris v. Harris, 118 WLR 1977 (Super. Ct. 1990); Thomas v. United States, App. D.C., 650 A.2d 183 (1994); Wooley v. United States, App. D.C., 697 A.2d 777 (1997); Robinson v. United States, App. D.C., 697 A.2d 787 (1997).

§ 33-519. Schedule IV tests.

The Mayor shall place a substance in Schedule IV if the Mayor finds that:

(1) The substance has a low potential for abuse relative to substances in Schedule III;

(2) The substance has currently accepted medical use in treatment in the United States or the District of Columbia; and

(3) The abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. (Aug. 5, 1981, D.C. Law 4-29, § 209, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501. States, App. D.C., 697 A.2d 777 (1997); Robinson v. United States, App. D.C., 697 A.2d 787 (1997).

Cited in Arrington v. United States, App. D.C., 585 A.2d 1342 (1991); Wooley v. United States, App. D.C., 697 A.2d 777 (1997).

§ 33-520. Schedule IV enumerated.

(a) The controlled substances listed in this section are included in Schedule IV, unless and until removed therefrom pursuant to § 33-511:

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Barbital;
- (B) Chloral betaine;
- (C) Chloral hydrate;
- (D) Chlordiazepoxide;
- (E) Clonazepam;
- (F) Clorazepate;
- (G) Dextropropoxyphene;
- (H) Diazepam;
- (I) Ethchlorvynol;
- (J) Ethinamate;
- (K) Flurazepam;
- (L) Lorazepam;
- (M) Mebutamate;
- (N) Meprobamate;
- (O) Methohexital;
- (P) Methylphenobarbital (mephobarbital);
- (Q) Oxazepam;
- (R) Paraldehyde;
- (S) Petrichloral;
- (T) Phenobarbital;
- (U) Prazepam;

- (V) Alprazolam;
- (W) Bromazepam;
- (X) Camazepam;
- (Y) Clobazam;
- (Z) Clotiazepam;
- (AA) Cloxazolam;
- (BB) Delorazepam;
- (CC) Estazolam;
- (DD) Ethyl loflazepate;
- (EE) Fludiazepam;
- (FF) Flunitrazepam;
- (GG) Halazepam;
- (HH) Haloxazolam;
- (II) Ketazolam;
- (JJ) Loprazolam;
- (KK) Lormetazepam;
- (LL) Medazepam;
- (MM) Midazolam;
- (NN) Nimetazepam;
- (OO) Nitrazepam;
- (PP) Oxazolam;
- (QQ) Omitted;
- (RR) Pinazepam;
- (SS) Quazepam;
- (TT) Temazepam;
- (UU) Tetrazepam; and
- (VV) Triazolam;

(2) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, such as Fenfluramine;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Diethylpropion;
- (B) Phentermine;
- (C) Pemoline (including organometallic complexes and chelates thereof);
- (D) Cathine;
- (E) Fencamfimin;
- (F) Fenproporex;
- (G) Mefenorex;
- (H) Pipradrol; and
- (I) SPA;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(A) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1), 2-diphenyl-1-3-methyl-2-propionoxybutane; and

(B) Pentazocine; and

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof of not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(b) The Mayor may except by rule any compound, mixture, or preparation containing any depressant substance listed in paragraph (1) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system. (Aug. 5, 1981, D.C. Law 4-29, § 210, 28 DCR 3081; amended by rule, 39 DCR 1882.)

Section references. — This section is referred to in §§ 32-1601, 33-511, and 33-512.

Legislative history of Law 4-29. — See note to § 33-501.

“Unless listed in another schedule” means “unless more specifically listed in another schedule.” *Carpenter v. United States*, App. D.C., 475 A.2d 369 (1984).

Cited in *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990); *Thomas v. United States*, App. D.C., 650 A.2d 183 (1994); *Wooley v. United States*, App. D.C., 697 A.2d 777 (1997); *Robinson v. United States*, App. D.C., 697 A.2d 787 (1997).

§ 33-521. Schedule V tests.

The Mayor shall place a substance in Schedule V if the Mayor finds that:

(1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) The substance has currently accepted medical use in treatment in the United States or the District of Columbia; and

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV. (Aug. 5, 1981, D.C. Law 4-29, § 211, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Cited in *Whyte v. United States*, App. D.C., 471 A.2d 1018 (1984); *Arrington v. United*

States, App. D.C., 585 A.2d 1342 (1991); *Wooley v. United States*, App. D.C., 697 A.2d 777 (1997); *Robinson v. United States*, App. D.C., 697 A.2d 787 (1997).

§ 33-522. Schedule V enumerated.

The controlled substances listed in this section are included in Schedule V unless and until removed therefrom pursuant to § 33-511.

(1) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, which also contains 1 or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(A) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(B) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(C) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(D) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(E) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit; and

(F) Not more than 0.5 milligrams of difenopin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Cannabis;

(3) Deleted upon adoption of rule in 34 DCMR 4370 on July 10, 1987;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

Buprenorphine;

(5) Propylhexedrine; and

(6) Pyrovalerone. (Aug. 5, 1981, D.C. Law 4-29, § 212, 28 DCR 3081; amended by rule, 39 DCR 1882.)

Section references. — This section is referred to in §§ 32-1601, 33-511, and 33-512.

Legislative history of Law 4-29. — See note to § 33-501.

Hashish is Schedule II controlled substance. — Although cannabis is listed as a Schedule V controlled substance and is defined under § 33-501(3) as including both marijuana and hashish, the separate listing of hashish in Schedule II indicates a clear legislative intent to include hashish as a Schedule II controlled

substance. *Lawrence v. United States*, App. D.C., 473 A.2d 373 (1984).

Cited in *Whyte v. United States*, App. D.C., 471 A.2d 1018 (1984); *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990); *Coles v. United States*, App. D.C., 682 A.2d 167 (1996), cert. denied, — U.S. —, 117 S. Ct. 751, 136 L. Ed. 2d 688 (1997); *Wooley v. United States*, App. D.C., 697 A.2d 777 (1997); *Robinson v. United States*, App. D.C., 697 A.2d 787 (1997).

§ 33-523. Revising and republishing of schedules.

The Mayor shall revise and republish the schedules semiannually for 2 years from August 5, 1981, and thereafter annually. The published schedules may include the brand or trade names of the substances controlled. (Aug. 5, 1981, D.C. Law 4-29, § 213, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Constitutionality. — This section is not unconstitutionally vague. It is a specific statute, advising precisely what is prohibited in such terms that an ordinary and reasonably

intelligent person can comply. *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990).

Revision and republication provisions deemed directory. — The use of the word “shall” in this section was intended by the City Council of the District of Columbia to be direc-

tory rather than mandatory. *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990).

Adding or subtracting a controlled substance. — Under this section, the Mayor is required to republish a schedule of controlled substances whenever the Mayor revises it by adding or subtracting a controlled substance. *Arrington v. United States*, App. D.C., 585 A.2d 1342 (1991).

Continued validity of initially listed

substances. — To the extent that the Mayor, or his designated delegate failed to comply literally with the provisions of this section, that failure to publish or republish schedules when there had been no change, had no effect upon the validity of those substances initially listed in the five schedules adopted by the City Council of the District of Columbia in 1981. *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990).

Subchapter III. Regulation of Manufacture, Distribution, and Dispensing.

§ 33-531. Rules and regulations; fees.

The Mayor may issue rules and regulations and may charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within the District of Columbia. (Aug. 5, 1981, D.C. Law 4-29, § 301, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-532. Registration — Required; renewal; exceptions; waiver; inspection.

(a) Every person who manufactures, distributes, or dispenses any controlled substance within the District of Columbia, or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within the District of Columbia, must obtain annually a registration issued by the Mayor in accordance with the rules. Applications to renew a registration must be filed in a timely manner, not less than 60 days prior to the expiration of the registration, or the registration shall abate.

(b) Persons registered with the Mayor under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this subchapter.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance acting in the usual course of business or employment;

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance; and

(4) A law-enforcement official or agent of the District of Columbia or the United States if he or she is on duty and is acting in the performance of officially authorized functions.

(d) The Mayor may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if the Mayor finds it consistent with the public health and safety.

(e) A separate registration is required for each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The Mayor may inspect the establishment of a registrant or applicant for registration in accordance with subsections (a) and (b) of this section. (Aug. 5, 1981, D.C. Law 4-29, § 302, 28 DCR 3081.)

Section references. — This section is referred to in § 33-533.

Legislative history of Law 4-29. — See note to § 33-501.

Dentists. — A dentist who deals with controlled substances must obtain two forms of government authorizations: First, the dentist needs a license to practice dentistry, renewable annually by the Board of Dentistry; Second, the

dentist must obtain an annual registration, issued by the Department of Consumer and Regulatory Affairs as the delegee of the Mayor, to dispense controlled substances. Both the license and the registration are subject to summary suspension and permanent suspension or revocation proceedings. *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

§ 33-533. Same — Public interest; limitations.

(a) The Mayor shall register an applicant to manufacture, distribute, or dispense controlled substances included in Schedules I, II, III, IV, and V unless the Mayor determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Mayor shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable District of Columbia law;

(3) Any convictions of the applicant under any federal, state, or District of Columbia laws relating to any controlled substance;

(4) Past experience in the manufacture, distribution, or dispensing of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to:

(1) Manufacture or distribute controlled substances in Schedule I or II other than those specified in the registration; or

(2) Manufacture, distribute, or dispense Cannabis unless specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the provisions of § 33-532. Separate registration shall be required for practitioners engaging in research with narcotic controlled substances set forth in Schedules II through V. The Mayor need not require separate registration under this subchapter for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this subchapter in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within the District of Columbia upon furnishing the Mayor evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration entitles them to be registered under this chapter. (Aug. 5, 1981, D.C. Law 4-29, § 303, 28 DCR 3081.)

Section references. — This section is referred to in § 33-534.

Legislative history of Law 4-29. — See note to § 33-501.

Cited in *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

§ 33-534. Same — Suspension; revocation; forfeiture of substances.

(a) A registration issued under § 33-533 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Mayor upon a finding that the registrant:

(1) Has been convicted of a felony under any District of Columbia, state, or federal law relating to any controlled substance;

(2) Has had his or her federal or state registration suspended or revoked to manufacture, distribute, or dispense controlled substances; or

(3) Has had his or her practitioner's license suspended or revoked in the District of Columbia by the appropriate authority.

(b) A registration issued under § 33-533 to manufacture, distribute, or dispense a controlled substance may be suspended by the Mayor upon a finding that the registrant has been convicted of a misdemeanor under any District of Columbia, state, or federal law relating to any controlled substance.

(c) The Mayor may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(d) If the Mayor suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court orders the sale of perishable substances and the deposit of the proceeds of the sale with the

court. Upon a revocation order becoming final, all controlled substances may be forfeited in accordance with the provisions of § 33-553(d).

(e) The Mayor shall promptly notify the D.E.A. of all orders suspending or revoking registration and all forfeitures of controlled substances. (Aug. 5, 1981, D.C. Law 4-29, § 304, 28 DCR 3081.)

Cross references. — As to return of property by Property Clerk, see § 4-157.

Section references. — This section is referred to in § 33-535.

Legislative history of Law 4-29. — See note to § 33-501.

References in text. — The reference to

“§ 33-553 (d),” appearing at the end of the last sentence of subsection (d), appears in the enacting legislation. Forfeiture provisions are contained in § 33-552.

Cited in *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

§ 33-535. Same — Procedural rights involving suspension or revocation.

(a) If it appears to the Mayor that an application for registration should be denied or that an existing registration should be suspended or revoked, the Mayor shall notify the applicant or registrant of the proposed denial, suspension, or revocation, briefly stating the reasons therefor. In the case of a denial of renewal of registration, notice shall be served not later than 30 days before the expiration of the registration. Service may be made by delivering a copy of the notice to the applicant or registrant personally, or by leaving a copy thereof at the place of residence identified on the application or registration with some person of suitable age and discretion then residing therein, or by mailing a copy of the notice by certified mail to the residence address identified on the application or certificate, in which case service shall be complete as of the date the return receipt was signed. In the case of an organization, service may be made upon the president, chief executive, or other officer, managing agent, or person authorized by appointment or law to receive such notice as described in the preceding sentence at the business address of the organization identified in the application or registration certificate. The person serving the notice shall make proof thereof with the Mayor in a manner prescribed by the Mayor. In the case of service by certified mail, the signed return receipt shall be filed with the Mayor together with a signed statement showing the date such notice was mailed and if the return receipt does not purport to be signed by the person named in the notice, then specific facts from which the Mayor can determine that the person who signed the receipt meets the appropriate qualifications for receipt of such notice set out in this subsection. The applicant or registrant shall have 30 days from the date the notice was served in which to request a hearing before the Mayor to contest the proposed action to be taken by the Mayor; provided, that if the applicant or registrant does not request a hearing within 30 days after the serving of the notice of the proposed action, the applicant or registrant shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial, suspension, or revocation shall become final. Within 30 days of the date upon which any contest is noted, the Mayor shall convene a hearing. Within 10 days of the close of the hearing, the Mayor shall notify the applicant or registrant of the decision in

the case. All proceedings, including the right to judicial review of the Mayor's decision, shall be in accordance with the District of Columbia Administrative Procedure Act. Where the application for renewal of registration has been timely filed, proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing. With regard to summary suspension of any registrant or the denial of renewal to any registration pursuant to subsection (b) of this section, a hearing shall be convened within 5 days of the institution of proceedings in this section; except, that a registrant who has been summarily suspended or denied a renewal under this section shall be entitled upon request to a postponement of such hearing.

(b)(1) The Mayor may suspend, without prior notice and hearing, any registration simultaneously with the institution of proceedings under § 33-534, or where renewal of registration is refused, if the Mayor finds that there is an imminent danger to the public health or safety which warrants this action, including, but not limited to, the danger that would be created by the outbreak of a serious fire on the business premises of a registrant on which controlled substances are stored, resulting in heat in excess of 110 degrees fahrenheit; grossly inadequate security measures; or while proceedings under § 33-534 are pending, continued and flagrant violations of the same sort which led to the institution of the pending proceedings.

(2) The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the Mayor or dissolved by a court of competent jurisdiction. (Aug. 5, 1981, D.C. Law 4-29, § 305, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

References in text. — The "District of Columbia Administrative Procedure Act," referred to in the tenth sentence of subsection (a), is codified in Chapter 15 of Title 1.

Due process rights relating to summary suspensions. — Although initially imposed without a hearing, a summary suspension of registration cannot be continued without providing to the person affected the full panoply of due process rights; within five days after the institution of summary suspension proceedings, unless the respondent requests more time, a hearing must be provided, held in

accordance with the District of Columbia Administrative Procedure Act, including the right of judicial review. *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

Summary suspension as prior discipline. — The District of Columbia Board of Dentistry permissibly concluded that a summary suspension of registration could be treated as prior "discipline" within the meaning of § 2-3305.14(a)(3), even though a permanent registration revocation was never effectuated. *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

§ 33-536. Records and inventories of registrants.

Persons registered to manufacture, distribute, or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law, laws of the District of Columbia, and with any additional rules which the Mayor issues. (Aug. 5, 1981, D.C. Law 4-29, § 306, 28 DCR 3081.)

Section references. — This section is referred to in § 33-538.

Legislative history of Law 4-29. — See note to § 33-501.

Cited in *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

§ 33-537. Order forms.

Controlled substances in Schedule I or II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section. (Aug. 5, 1981, D.C. Law 4-29, § 307, 28 DCR 3081.)

Section references. — This section is referred to in § 33-543.

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-538. Prescriptions.

(a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the Mayor, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of § 33-536. No prescription for a Schedule II controlled substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined under § 353(b) of Title 21, United States Code, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than 5 times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) Whenever a practitioner dispenses any controlled substance on a written or oral prescription issued by a practitioner, the practitioner shall affix to the container in which such controlled substance is dispensed a label showing the name of the controlled substance or controlled substances contained therein unless otherwise so indicated by the prescribing practitioner; the serial number and date of initial filling; the directions for use; the practitioner's name and registry number; the name of the ultimate user, or if the ultimate user is an animal, the name of the owner and the species of the animal; the name of the practitioner issuing the prescription; and caution statements, if any, as required by law. (Aug. 5, 1981, D.C. Law 4-29, § 308, 28 DCR 3081.)

Section references. — This section is referred to in § 33-542.

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-539. Civil infractions.

Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 27 of Title 6. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 27 of Title 6. (Aug. 5, 1981, D.C. Law 4-29, title III, § 309, as added Mar. 8, 1991, D.C. Law 8-237, § 6, 38 DCR 314.)

Legislative history of Law 8-237. — Law 8-237 was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second read-

ings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Subchapter IV. Offenses and Penalties.

§ 33-541. Prohibited acts A; penalties.

(a)(1) Except as authorized by this chapter, it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance.

(2) Any person who violates this subsection with respect to:

(A) A controlled substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than \$500,000, or both;

(B) Any other controlled substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than \$50,000, or both;

(C) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than \$25,000, or both; or

(D) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$10,000, or both.

(b)(1) Except as authorized by this chapter, it is unlawful for any person to create, distribute, or possess with intent to distribute a counterfeit substance.

(2) Any person who violates this subsection with respect to:

(A) A counterfeit substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than \$500,000, or both;

(B) Any other counterfeit substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than \$50,000, or both;

(C) A counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than \$25,000, or both; or

(D) A counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than 1 year, fined not more than \$10,000, or both.

(c) Repealed.

(d) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 180 days, fined not more than \$1,000, or both.

(e)(1) If any person who has not previously been convicted of violating any provision of this chapter, or any other law of the United States or any state relating to narcotic or abusive drugs or depressant or stimulant substances is found guilty of a violation of subsection (d) of this section and has not previously been discharged and had the proceedings dismissed pursuant to this subsection, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him or her on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him or her from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under § 33-548 for second or subsequent convictions) or for any other purpose.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise

giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.

(f) The prosecutor may charge any person who violates the provisions of subsection (a) or (b) of this section relating to the distribution of or possession with intent to distribute a controlled or counterfeit substance with a violation of subsection (d) of this section if the interests of justice so dictate.

(g) For the purposes of this section, "offense" means a prior conviction for a violation of this section or a felony that relates to narcotic or abusive drugs, marijuana, or depressant or stimulant drugs, that is rendered by a court of competent jurisdiction in the United States. (Aug. 5, 1981, D.C. Law 4-29, § 401, 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(c)(1), 28 DCR 4348; Mar. 9, 1983, D.C. Law 4-166, §§ 9, 10, 30 DCR 1082; Sept. 26, 1984, D.C. Law 5-121, § 2(a), 31 DCR 4046; Mar. 15, 1985, D.C. Law 5-171, § 2(a), 32 DCR 730; Feb. 28, 1987, D.C. Law 6-201, § 2(c), 34 DCR 524; June 13, 1990, D.C. Law 8-138, § 2(c), 37 DCR 2638; Aug. 20, 1994, D.C. Law 10-151, § 112(a), 41 DCR 2608; May 25, 1995, D.C. Law 10-258, § 3, 42 DCR 238; Apr. 18, 1996, D.C. Law 11-110, § 34(b), 43 DCR 530.)

Cross references. — As to exceptions from application of good time credits, see § 24-434.

Section references. — This section is referred to in §§ 23-546, 24-434, 33-546, 33-547, 33-547.1, and 33-552.

Effect of amendments. — D.C. Law 11-110 validated a previously made substitution of "section" for "subsection" in (g).

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 4-52. — Law 4-52 was introduced in Council and assigned Bill No. 4-270, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 28, 1981 and September 15, 1981, respectively. Signed by the Mayor on September 25, 1981, it was assigned Act No. 4-89 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-166. — See note to § 33-501.

Legislative history of Law 5-121. — Law 5-121 was introduced in Council and assigned Bill No. 5-448. The Bill was adopted on first and second readings on June 12, 1984, and June 26, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-173 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-171. — Law 5-171 was introduced in Council and assigned Bill No. 5-443, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it

was assigned Act No. 5-236 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-201. — See note to § 33-501.

Legislative history of Law 8-50. — See note to § 33-501.

Legislative history of Law 8-138. — See note to § 33-543a.

Legislative history of Law 10-151. — Law 10-151, the "Omnibus Criminal Justice Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Legislative history of Law 10-258. — Law 10-258, the "District of Columbia Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-617, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-392 and transmitted to both Houses of Congress for its review. D.C. Law 10-258 became effective May 25, 1995.

Legislative history of Law 11-110. — See note to § 30-501.

Mayor to implement public information program. — See note to § 33-501.

Enactment of statute authorized despite unconstitutional 1-house veto in Home Rule Act. — Legislative history affirmatively shows that the 1-house veto provision in § 1-233(c)(2) was not central to the passage of the Home Rule Act, so that the severable balance of the Act remains valid, and the government of the District established by the Act has the authority to enact statutes. *Gary v. United States*, App. D.C., 499 A.2d 815 (1985), cert. denied sub nom. *Cole v. United States*, 475 U.S. 1086, 106 S. Ct. 1470, 89 L. Ed. 2d 725, cert. denied, 477 U.S. 906, 106 S. Ct. 3279, 90 L. Ed. 2d 568 (1986).

This section was enacted with proper authority by voter initiative. *McClough v. United States*, App. D.C., 520 A.2d 285 (1987).

Applicability of 1996 amendment. — The 180-day maximum provided in the new version of subsection (d) does not apply to offenses committed before the effective date of the subsection's amendment. *Turner v. United States*, App. D.C., 684 A.2d 313 (1996).

Applicability of 1995 amendment. — As of May 25, 1995, the court was no longer empowered to impose the mandatory minimum terms previously required for distribution and possession with intent to distribute controlled substances, regardless of the date on which the offenses were committed. *United States v. Palmer*, 124 WLR 277 (Super. Ct. 1995).

Applicability of 1987 amendment. — The amendment of this section by D.C. Law 6-201 is not applicable retroactively. *Johnson v. United States*, App. D.C., 576 A.2d 739 (1990).

Recovery of contraband not seizure under Fourth Amendment. — Where contraband was recovered as a result of an encounter on the street between defendant and a police officer, Superior Court correctly concluded that there were no intimidating circumstances in the encounter, that a reasonable person would have felt free to leave, and that there was no seizure under the Fourth Amendment to the U.S. Constitution. *Lawrence v. United States*, App. D.C., 566 A.2d 57 (1989).

Constitutionality of provisions governing rehabilitation. — It is neither irrational nor unreasonable to conclude that a defendant with a previous drug trafficking conviction would be less susceptible to rehabilitation by reason of his past record, and it is rational to limit rehabilitation resources to those drug abusers who have no previously demonstrated involvement in drug trafficking. Without regard to treatment considerations, it is reasonable to provide legislative grace to those who have no prior drug trafficking record, as opposed to those who have previously been convicted of a distribution-type offense. The rational bases for the distinction drawn in this section are sufficient to successfully withstand constitutional challenge, and do not violate

principles of equal protection. *Gibson v. United States*, App. D.C., 602 A.2d 117 (1992).

Repeal of mandatory sentencing provisions does not apply retroactively. — The D.C. Council's repeal of the mandatory sentencing provisions of the District of Columbia's drug distribution laws does not apply retroactively to defendants who committed crimes before the enactment of the repealing legislation but whose sentencings are scheduled thereafter. *United States v. Holiday, Etc.*, 123 WLR 1957 (Super. Ct. 1995).

Acceptance of stipulations. — It is appropriate and desirable for a court to accept stipulations, such as the chain of custody of the contraband, the nature of the contraband, and the usable amount of the contraband, where it concludes that the proceedings will be expedited and that the defendant will not be prejudiced thereby. *Beach v. United States*, App. D.C., 466 A.2d 862 (1983).

Enforcement of drug laws does not infringe on First Amendment rights. — The District of Columbia's interest in protecting society by the enforcement of its drug laws constitutes a compelling governmental interest which outweighs any interest of the defendant in using marijuana as part of his religious practices as protected under the free exercise clause of the First Amendment. *Whyte v. United States*, App. D.C., 471 A.2d 1018 (1984).

Right to jury trial. — The District of Columbia City Council has the legislative authority to classify the severity of crimes within the District. Defendants charged with any of the 40 streamlined offenses under the Omnibus Criminal Justice Reform Amendment Act are not entitled to a jury trial. *United States v. Moriba*, 123 WLR 1201 (Super. Ct. 1995).

The fact that Congress has fixed a maximum one-year penalty for possession of cocaine, while relevant to deciding whether the right to a jury trial attaches to the federal offense, is irrelevant in determining whether the local offense under which the government charged defendant is "serious" or "petty." The question is not whether some other legislative authority, such as Congress, considers an offense "serious," but whether the Council of the District of Columbia does so. *Brown v. United States*, App. D.C., 675 A.2d 953 (1996).

Defendant's probation revocation was a continuation of the prosecution of his first offense. The fact that this revocation was triggered by a later offense did not make the additional 120 days in prison part of the punishment for the second offense, and did not invoke the Sixth Amendment right to a jury. *Brown v. United States*, App. D.C., 675 A.2d 953 (1996).

Where defendant had pled guilty to one count of possession of cocaine and had received a suspended sentence, he qualified for additional penalties under §§ 22-104(a) and 33-548(a)

when the government charged him with a second such offense. However, since the government never exposed defendant to the possibility of an enhanced sentence by filing a notice of prior convictions and prosecuting him as a repeat offender, the defendant was not due a Sixth Amendment jury trial. *Brown v. United States*, App. D.C., 675 A.2d 953 (1996).

Potential loss of a driver's license for one convicted of a misdemeanor drug offense carrying a maximum penalty of six months imprisonment does not transform a petty offense into a serious offense requiring a jury trial. *Young v. United States*, App. D.C., 678 A.2d 570 (1996).

Effect of eligibility for recidivist penalties. — Mere eligibility for recidivist penalties will not rebut a presumption that an offense is "petty." *Brown v. United States*, App. D.C., 675 A.2d 953 (1996).

Elements. — A sale or an exchange of money for drugs is not required under this section, nor does it distinguish among types of transfers between parties, i.e., sales to third persons or deliveries between a dealer and a courier. *Malloy v. United States*, App. D.C., 605 A.2d 59 (1992).

Subsection (g) purely definitional. — Subsection (g) of this section is purely definitional; its sole function is to define the term "offense", so that the reader will understand what the word means when it is used elsewhere in the sentencing statute. *Gilmore v. United States*, App. D.C., 699 A.2d 1130 (1997).

Merger of offenses. — Defendant's conviction for possession of marijuana merged as a lesser included offense in his conviction for possession with intent to distribute marijuana. *Bourn v. United States*, App. D.C., 567 A.2d 1312 (1989).

Convictions for possession of cocaine in co-defendant's knapsack with intent to distribute and possession of cocaine in the bedroom with intent to distribute merged into one offense. *Brown v. United States*, App. D.C., 691 A.2d 1167 (1997).

Separate offenses established. — Convictions were based on two separate offenses rather than one where there was an appreciable period of time between the act of distribution and the later act of possessing three tinfoil packets with intent to distribute, which was long enough to enable police officers to drive around the block. *Allen v. United States*, App. D.C., 580 A.2d 653 (1990).

One who sells a drug and retains a quantity of the drug for future sales has committed two crimes: (1) distribution of the former quantity, and (2) possession with intent to distribute the latter quantity. *Owens v. United States*, App. D.C., 688 A.2d 399 (1996).

"Usable quantity" rule. — A common sense application of the statute is that where the seized substance is of an amount so inconsider-

able as to make it of no utility to a user and unmarketable, it is not such a narcotic as contemplated by Congress to be a danger to society. *Wishop v. United States*, App. D.C., 531 A.2d 1005 (1987).

The government must prove there was a usable quantity of each drug charged, and measurability is evidence of a usable quantity, along with any other evidence bearing on the issue of usability. *Wishop v. United States*, App. D.C., 531 A.2d 1005 (1987).

"Usable quantity" rule applies to distribution of narcotics cases as well as possession. *Wishop v. United States*, App. D.C., 531 A.2d 1005 (1987).

Constructive possession. — Evidence sufficient to find constructive possession of cocaine and heroin, in spite of trial error. *Curry v. United States*, App. D.C., 520 A.2d 255 (1987).

Where evidence was enough to support inferences that defendant knew about the drugs in his basement and had the ability, as well as the intent, to exercise dominion and control over them, the evidence was sufficient to support his conviction for constructive possession of the drugs. *Earle v. United States*, App. D.C., 612 A.2d 1258 (1992).

Evidence showing the defendant's interaction with a co-defendant on the sidewalk in front of the house was sufficient to prove that the defendant constructively possessed drugs found in the co-defendant's knapsack inside the house. *Brown v. United States*, App. D.C., 691 A.2d 1167 (1997).

Evidence was sufficient to prove that the defendant, while on the sidewalk in front of the house, constructively possessed the drugs and gun found in the bedroom. *Brown v. United States*, App. D.C., 691 A.2d 1167 (1997).

Forfeiture of vehicle used to transport. — Where defendant was charged with possession of cocaine under this section, her car was not subject to forfeiture under § 33-542 even if she had actually used the car to transport the cocaine. *United States v. Zarbough*, 115 WLR 273 (Super. Ct. 1987).

Being an agent of the buyer is not a defense to a charge of distribution of a controlled substance under subdivision (a)(1). *Minor v. United States*, App. D.C., 623 A.2d 1182 (1993).

Whether substances are "controlled" is a question of law. — What substances were distributed is a question of fact for the jury; whether those substances are "controlled" within the meaning of subdivision (a)(1), however, is a question of law and need not be proved to the jury. *Williams v. United States*, App. D.C., 552 A.2d 1255 (1988).

As a matter of law, PCP and marijuana are "controlled substances" within the meaning of paragraph (a)(1), and the judge is correct in so

instructing the jury. *Williams v. United States*, App. D.C., 552 A.2d 1255 (1988).

Identification of seized drugs. — Because drugs are fungible, the government is required to prove that the material seized from defendant by the police and thought to be illegal drugs was the same material analyzed by the chemist and found to be cocaine. *Turney v. United States*, App. D.C., 626 A.2d 872 (1993).

Court's inquiry limited to chemical content of what was actually possessed. — Because erroneous intent and common practice are insufficient to convict if the substance is not in fact illegal, court's inquiry must be confined to the chemical contents of what was actually possessed. *Singley v. United States*, App. D.C., 533 A.2d 245 (1987).

Amendment of indictment. — Where the indictment charged defendant with possession with the intent to distribute a controlled substance/heroin, but the trial court allowed the prosecution to proceed with the understanding that the controlled substance was cocaine (a substance which has notably different properties and legal consequences from heroin), the trial court constructively amended the indictment in violation of the defendant's Fifth Amendment right to be tried only on charges contained in the grand jury's indictment. *Wooley v. United States*, App. D.C., 697 A.2d 777 (1997).

Proof of amount. — The government is not required to prove a measurable amount of the active ingredient, cocaine; it is sufficient to sustain a conviction if the government proves a measurable amount of a mixture containing cocaine. *Hicks v. United States*, App. D.C., 697 A.2d 805 (1997).

Substantial amount of drug is usable; trace amount is not. — A drug found in a substantial amount is still usable even if a simple step has to be performed before it produces a narcotic effect; but a trace amount is insufficient to convict whenever it cannot produce a narcotic effect in any form. *Singley v. United States*, App. D.C., 533 A.2d 245 (1987).

Intent to distribute. — Giving or sharing drugs with another constitutes distribution under the law, and an intention to share is evidence of an intent to distribute. *Wright v. United States*, App. D.C., 588 A.2d 260 (1991).

Defendant's acknowledged plan to share drugs with his companions reflected an intent to distribute heroin, as having bought the drugs on the street, he carried them to another place (his apartment) and as he intended, until the preemptive strike by the officers thwarted his plan, to give much of the contraband to his companions; a sale or an exchange of money for drugs is not required under the statute. *Long v. United States*, App. D.C., 623 A.2d 1144 (1993).

Defendant who sold drugs in order to earn money to support his drug habit, spent approx-

imately \$120 a day on drugs for his personal use, and had a criminal record, did not distribute heroin for the primary purpose of satisfying his addiction. *Pearsall v. United States*, App. D.C., 636 A.2d 966, cert. denied, 513 U.S. 843, 115 S. Ct. 133, 130 L. Ed. 2d 76 (1994).

Probable cause to arrest for possession with intent to distribute. — Telephone call from paid police informant indicating that defendant was engaged in drug sales and providing detailed description of defendant gave police probable cause to arrest defendant for possession with intent to distribute. *Turner v. United States*, App. D.C., 588 A.2d 280 (1991).

The police lacked reasonable suspicion to stop three youths where the arrest team knew at the time the "lookout" was broadcast that there were at least five individuals in the area who fit the description equally well. Under the circumstances, the arrest team was required to request further descriptive details about the drug seller from the undercover officer. *In re A.S.*, App. D.C., 614 A.2d 534 (1992).

Attempt to distribute. — To prove that defendant attempted to distribute cocaine, government was required to prove defendant had intent to commit crime and performed some act toward commission, but was not required to prove substance actually was cocaine. *Thompson v. United States*, App. D.C., 678 A.2d 24 (1996).

Officer had articulable grounds to suspect defendant possessed narcotics and a weapon. *Offutt v. United States*, App. D.C., 534 A.2d 936 (1987).

Mandatory-minimum sentences do not unconstitutionally eliminate the court's sentencing discretion. *United States v. Brown*, 115 WLR 1821 (Super. Ct. 1987).

Mandatory-minimum sentence scheme constitutional. — The sentencing scheme under the former provisions of subsection (c) of this section which applied more severe punishment for distribution of small amounts of crack cocaine than for larger amounts of cocaine powder was constitutional. *Holiday v. United States*, App. D.C., 683 A.2d 61 (1996), cert. denied, — U.S. —, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997).

Mandatory-minimum sentence under this section does not violate the defendant's due process right to an individualized sentence. *United States v. Brown*, 115 WLR 1821 (Super. Ct. 1987).

Where trial judge did not proceed with an addict exception hearing because he determined from the presentence report that he would implement the mandatory minimum sentence, there was no abuse of discretion, even assuming that the appellant was eligible for the exception and could produce an alternative sentencing plan. *Mozelle v. United States*, App. D.C., 612 A.2d 221 (1992).

Mandatory-minimum sentence provision was not applicable to cases in which defendants had entered pleas to attempted distribution. *United States v. Rogers*, 115 WLR 221 (Super. Ct. 1987).

Authority to impose mandatory-minimum sentence removed. — The 1995 amendment to this section contains simply a repealing provision and an effective date. Effective May 25, 1995, D.C. Law 10-258 removed the statutory authority for imposition of mandatory-minimum sentences for drug distribution and possession with intent to distribute, and the superior court may no longer impose the mandatory minimum penalties for those offenses. *United States v. Palmer*, 123 WLR 2413 (Super. Ct. 1995).

Applicability of mandatory-minimum sentence provisions to offenses occurring prior to May 25, 1995. — Both § 49-304 and the federal savings statute, 1 U.S.C. § 109, preserve mandatory-minimum sentences in all cases under this section where the offense was committed before May 25, 1995, the effective date of the repeal of the mandatory-minimum sentencing provisions of subsection (c). *Holiday v. United States*, App. D.C., 683 A.2d 61 (1996), cert. denied, — U.S. —, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997).

The new, more lenient sentencing provisions of this section which omit mandatory-minimum sentencing did not apply to cases where the offenses took place prior to the May 25, 1995 repeal of the mandatory-minimum sentencing provision but sentencing did not take place until after that date. *Holiday v. United States*, App. D.C., 683 A.2d 61 (1996), cert. denied, — U.S. —, 117 S. Ct. 1349, 137 L. Ed. 2d 506 (1997).

Consecutive sentences imposed for possession of marijuana laced with phencyclidine. — The trial court did not err in imposing consecutive sentences for possession of marijuana laced with phencyclidine since the possession of each prohibited substance is a separate offense. *Corbin v. United States*, App. D.C., 481 A.2d 1301 (1984).

Defendants who allegedly possessed marijuana laced with phencyclidine (PCP) were properly charged with two separate offenses: Possession of phencyclidine (PCP) and possession of marijuana. The government is not required to elect to prosecute defendants of violation of only one offense. *United States v. Daniels*, 112 WLR 1665 (Super. Ct. 1984).

Nature of juvenile proceedings. — The plain language of subsection (e) establishes that it does not apply to persons involved in juvenile proceedings, but rather to persons involved in criminal proceedings. Distinctive terms are used in juvenile proceedings which do not include words such as "conviction," "guilty," "indictment" or "information" that are

found under this section. In re D.F.S., App. D.C., 684 A.2d 1281 (1996).

Denial of speedy trial to juvenile. — Considering and balancing all relevant factors, juvenile defendant's belated expression of an interest in resolving the case, the absence of a direct request for a speedy trial, and the nature of the prejudice asserted, defendant was not deprived of his right to a speedy trial for possession of a controlled substance with intent to distribute, even though he became ineligible for sentencing under the Youth Rehabilitation Act by the time of trial. *Dickerson v. United States*, App. D.C., 650 A.2d 680 (1994).

Application of subsection (e) to juvenile. — A minor respondent who was a child at the time on an alleged offense falls under the jurisdiction of the Family Division, unless formally transferred for criminal prosecution. Consequently, no criminal conviction can result from the Family Division's disposition. Instead, a consent decree, order of adjudication, or order of disposition may be issued. Accordingly, the trial judge had no discretion to use subsection (e). In re D.F.S., App. D.C., 684 A.2d 1281 (1996).

Failure of government to timely notify court of defendant's prior conviction prevented resentencing. — A defendant who had successfully completed a probationary term imposed pursuant to subsection (e) was not subject to resentencing when, six months after the defendant's discharge from probation, the government notified the court of a prior conviction which would have made defendant ineligible for the original sentence imposed. *United States v. A.B.*, 117 WLR 785 (Super. Ct. 1989).

Documents subject to provisions of subdivision (e)(2). — Documents that are commonly included in an appellate record—copies of trial court pleadings, transcripts, verdict forms, probation orders, and so on—are subject to the provisions of subdivision (e)(2), regardless of whether they are found in trial court files or appellate court files. *O.J.M. v. United States*, App. D.C., 554 A.2d 1149 (1989).

Multiple punishments not authorized. — The plain language of this section indicates that the Council did not graduate the gravity of the crime in terms of the quantity of the controlled substance possessed. Nor does the section provide for distinctive penalties based on the purity of the controlled substance recovered, the packaging, or the location of the stashes. Thus, it appears that the Council did not intend to authorize multiple punishments. Therefore, where the defendant's constructive possession of marijuana of various quantities of varying purity occurred at the same time in his apartment, multiple punishments are not authorized. *Briscoe v. United States*, App. D.C., 528 A.2d 1243 (1987).

There was no abuse of discretion in the court's refusal to grant subsection (e) relief simply because defendant's prospect of future employment by a hospital would be greatly diminished if the facts concerning the conviction for possession of controlled substances were not excised from her record. *Williams v. United States*, App. D.C., 571 A.2d 212 (1990).

Refusal to exercise discretion. — Where the court refused to sentence defendant under subsection (e) because it had an established policy of never using that provision when heroin or cocaine was involved, the court abused its discretion by adherence to such a uniform policy instead of exercising its discretion. *Houston v. United States*, App. D.C., 592 A.2d 1066 (1991).

"Attempted transfer." — Trial court's instruction to the jury in a distribution of cocaine case properly included "attempted transfer" within the meaning of distribution, and in no way did it constitute an amendment to the indictment. *Johnson v. United States*, App. D.C., 611 A.2d 41 (1992).

Failure to provide jury instruction on lesser included offense of possession. — The trial court should have given an instruction which allowed the jury to consider the lesser included offense, if unable to reach a verdict on the greater offense, after making all reasonable efforts to do so. However, the error did not require reversal in this case where the defendant admitted at trial the lesser possession offense as well as the extra element of proof which distinguishes the greater offense, intent to distribute, from the lesser one. *Wright v. United States*, App. D.C., 588 A.2d 260 (1991).

In prosecution for possession with intent to distribute a controlled substance, court's failure to instruct jury on lesser included offense of attempted possession in addition to lesser included offense of simple possession was harmless error. The jury determined appellant's intent was consistent with the greater offense of possession with intent to distribute, thus, another instruction on a lesser included offense would have had no impact on the jury's finding. *Mitchell v. United States*, App. D.C., 595 A.2d 1010 (1991), cert. denied, 503 U.S. 923, 112 S. Ct. 1303, 117 L. Ed. 2d 525 (1992).

Instruction on lesser included offense of possession not required. — A sufficient evidentiary basis did not exist for the trial court, in charging the jury on a count alleging distribution of heroin, to also have given an instruction on the lesser included offense of possession. *Minor v. United States*, App. D.C., 623 A.2d 1182 (1993).

Defendant was properly convicted under this section of possession with intent to distribute heroin, even though undercover officer attempted to buy cocaine from the defen-

dant and was sold heroin instead, because both are controlled substances. *Carter v. United States*, App. D.C., 591 A.2d 233 (1991). = *Hill v. United States*, App. D.C., 541 A.2d 1285 (1988).

Police officer's identification of defendant was sufficiently reliable to submit the case to the jury. *Samson v. United States*, App. D.C., 692 A.2d 437 (1997).

Reversible error found. — In prosecution for distribution of cocaine, denial of defendant's motion for continuance of trial until after sentencing of witness who intended to invoke his privilege against self-incrimination, but whose testimony would exonerate defendant, was reversible error. *Tucker v. United States*, App. D.C., 571 A.2d 797 (1990).

Prosecutorial misconduct not found. — Where defendant was tried and convicted of distribution of cocaine, prosecutor's reference to defendant's use of an "alias" did not constitute prosecutorial misconduct. *Van Ness v. United States*, App. D.C., 568 A.2d 1079 (1990).

The government has a qualified privilege to withhold the exact location of a drug observation post. That privilege, however, is not absolute. A defendant can force the government to divulge the exact location of an observation post upon a sufficient showing of need. The defendant is obliged to show not only that there are locations in the area from which the view is impaired or obstructed, but also that there is some reason to believe that the officer was making his observations from such a location. *Carter v. United States*, App. D.C., 614 A.2d 913 (1992).

"Usable amount." — Where there was nothing more than a slight amount of a substance which, although measurable, served primarily to illustrate the item's potency, court concluded that the evidence was such that, even in a light most favorable to the government, no reasonable juror could conclude beyond a reasonable doubt that defendant possessed an amount sufficient to use. *United States v. Strong*, 119 WLR 2297 (Super. Ct. 1991).

Usability can be established in many ways: First, if the quantity of a drug is measurable, it is evidence of a usable amount; second, expert testimony; and finally, circumstantial evidence that drugs are offered for sale in quantities and packaging consistent with distribution. *Gray v. United States*, App. D.C., 600 A.2d 367 (1991).

The government's proof of usable amount will not fail unless there is only a trace of a substance, a chemical constituent not quantitatively determined because of minuteness, and where there is no additional proof of its usability as a narcotic. *Barnes v. United States*, App. D.C., 614 A.2d 902 (1992).

Usable amount standard no longer applicable. — In order to secure a conviction for controlled substance violations, the government need only prove there was a measurable

amount of the controlled substance in question; the usable amount standard will no longer apply to prosecutions under this Act. *Thomas v. United States*, App. D.C., 650 A.2d 183 (1994).

Capable of producing narcotic effect. — Where the drug analysis revealed very slight, albeit measurable, amounts of a controlled substance, and the government could not offer substantial proof showing either a connection between the quantity seized and quantities commonly packaged for distribution, or adequate expert opinions, the government could not merely rely on measurability, instead it must show that the drug was capable of producing a narcotic effect. *United States v. Strong*, 119 WLR 2297 (Super. Ct. 1991).

Proof of narcotic effect. — Proof of usability does not require proof that the amount was sufficient to have a pharmacological effect on the user; there is no requirement of proof of narcotic effect regardless of the quantity of the controlled substances and other proof of its usability. *Judge v. United States*, App. D.C., 599 A.2d 417 (1991).

Proof of narcotic effect where the quantity of the controlled substance is measurable and there is other evidence of its usability is not required. *Gray v. United States*, App. D.C., 600 A.2d 367 (1991).

The law does not require the government to prove narcotic effect where the record establishes that the amount of the controlled substance seized constitutes a "usable amount." Proof of narcotic effect is only required where a minute amount of a controlled substance that "cannot be sold, ... administered[,] or dispensed" has been recovered. *Johnson v. United States*, App. D.C., 611 A.2d 41 (1992).

Evidence established clearly that the amount of cocaine distributed by appellant was not so minute that proof of narcotic effect was required. *Johnson v. United States*, App. D.C., 611 A.2d 41 (1992).

Evidence of intent to distribute. — Evidence tending to show that defendant participated in the sale of drugs would be admissible to prove that he intended to distribute drugs found in his possession a short time thereafter. *Lawrence v. United States*, App. D.C., 603 A.2d 854 (1992).

Where drugs and paraphernalia seized were packaged in a manner consistent with distribution, the evidence was sufficient for the jury to infer the intent to distribute. *Earle v. United States*, App. D.C., 612 A.2d 1258 (1992).

Testimony of an expert witness describing a common drug distribution scheme involving a number of persons fulfilling different roles was properly admitted. *Griggs v. United States*, App. D.C., 611 A.2d 526 (1992).

Where one defendant was found not in a room with the drugs but in another room several steps away, the jury reasonably could have

inferred from the defendants' own testimony that the conflicting stories were inherently contradictory and farfetched, especially when contrasted with the police witnesses' testimony, which could supply a powerful, reasonable inference that this defendant was involved in a concerted illegal drug operation. *Earle v. United States*, App. D.C., 612 A.2d 1258 (1992).

Evidence of intent to distribute was sufficient where the government presented un rebutted expert testimony that the quantity and packaging of the drugs recovered from appellant was more consistent with an intent to distribute them than with personal use. *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

Government presented sufficient evidence for a reasonable juror to find appellant guilty beyond a reasonable doubt of possession of cocaine with intent to distribute it. *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

A jury may properly consider all of the material circumstances bearing on an accused's conduct relevant to charges of possession of drugs with intent to distribute, including evidence of a sale for which the defendant was convicted of distribution. *Owens v. United States*, App. D.C., 688 A.2d 399 (1996).

Where defendant feared coming to court because he feared another whom he was to name as the perpetrator of the distribution offense, the defendant's explanation constituted an exception to the hearsay rule because it showed his state of mind, and could be used to vitiate any notion of consciousness of guilt as to either the Bail Reform Act or the distribution charge. *Price v. United States*, App. D.C., 697 A.2d 808 (1997).

Evidence of "encouraging and facilitating" distribution. — Where the defendant accompanied police officer to person who actually sold drugs to the police officer, introduced police officer as his cousin, and waited while she purchased crack cocaine from him, this conduct clearly "encouraged and facilitated" the crime of distribution. *Griggs v. United States*, App. D.C., 611 A.2d 526 (1992).

Evidence (1) that defendant was present during co-defendant's sale of cocaine to an undercover police officer, and (2) that the police officer asked if defendant and co-defendant had any "dimes" and whether he could purchase some and defendant asked the officer how many he wanted, was sufficient to support defendant's conviction for aiding and abetting co-defendant's distribution of cocaine. *Spencer v. United States*, App. D.C., 688 A.2d 412 (1997).

Evidence of aiding and abetting in possession of narcotics. — Evidence that an appellant affirmatively participated so that another person was able to obtain possession of the seized heroin was sufficient to support a conviction for aiding and abetting in possession

of narcotics. *Selby v. United States*, App. D.C., 501 A.2d 800 (1985).

Actual or constructive possession unnecessary to prove aiding and abetting possession with intent to distribute. — Where evidence of intent to distribute is abundant, the government need not establish that defendant possessed the drugs herself, either actually or constructively, in order to prove that she aided and abetted someone else in doing so. Defendant's making her apartment available to others for the intended distribution of cocaine was enough to make her an aider and abettor of possession with intent to distribute, even though the evidence did not establish that she had either actual or constructive possession of the drugs thrown from the window. *Greer v. United States*, App. D.C., 600 A.2d 1086 (1991).

Evidence held sufficient to show possession of marijuana and phencyclidine with intent to distribute. — See *Shorter v. United States*, App. D.C., 506 A.2d 1133 (1986); *Bourn v. United States*, App. D.C., 567 A.2d 1312 (1989).

Identification testimony of a single eyewitness is sufficient to sustain a conviction of distributing a controlled substance (coupled, of course, with other evidence identifying the substance itself). *Hill v. United States*, App. D.C., 541 A.2d 1285 (1988).

Evidence was sufficient to support conviction. See *Chambers v. United States*, App. D.C., 564 A.2d 26 (1989); *Lawrence v. United States*, App. D.C., 566 A.2d 57 (1989); *Rogers v. United States*, App. D.C., 566 A.2d 69 (1989); *Thompson v. United States*, App. D.C., 567 A.2d 907 (1989); *Murphy v. United States*, App. D.C., 572 A.2d 435 (1990); *Patterson v. United States*, App. D.C., 575 A.2d 305, cert. denied, 498 U.S. 863, 111 S. Ct. 172, 112 L. Ed. 2d 137 (1990); *Bernard v. United States*, App. D.C., 575 A.2d 1191 (1990); *Edmonds v. United States*, App. D.C., 609 A.2d 1131 (1992), cert. denied, 508 U.S. 980, 113 S. Ct. 2983, 125 L. Ed. 2d 679 (1993); *Cosby v. United States*, App. D.C., 614 A.2d 1291 (1992); *Spinner v. United States*, App. D.C., 618 A.2d 176 (1992); *Spriggs v. United States*, App. D.C., 618 A.2d 701 (1992); *Symes v. United States*, App. D.C., 633 A.2d 51 (1993); *Dickerson v. United States*, App. D.C., 650 A.2d 680 (1994).

A jury could reasonably find defendant guilty of distributing cocaine on an aiding and abetting theory where defendant admitted that she intended to help an undercover officer find people who were selling the illegal drugs that the officer wanted to buy. *Lowman v. United States*, App. D.C., 632 A.2d 88 (1993).

Evidence held sufficient to support conviction where testimony by police officers established that defendant purchased one Dilaudid pill (a controlled substance) from codefendant, where police sergeant testified that he saw codefendant

push the proceeds of that sale through the doorknob hole to where the defendant was, where defendant was arrested in a house known as a place where illegal drugs were recently sold, and where expert testimony allowed the jury to infer that codefendants were jointly involved in the drug sale and that each of them had a defined role. *Bedney v. United States*, App. D.C., 684 A.2d 759 (1996).

Evidence was sufficient to support conviction of possession with intent to distribute cocaine. *Lawrence v. United States*, App. D.C., 603 A.2d 854 (1992); *Stevenson v. United States*, App. D.C., 608 A.2d 732 (1992); *Sturgess v. United States*, App. D.C., 633 A.2d 56 (1993); *Hughes v. United States*, App. D.C., 633 A.2d 851 (1993).

Cocaine in a paper bag, packaged in separate ziplock bags, ready for sale to customers on the street, is strong evidence of an intent to distribute. *Edmonds v. United States*, App. D.C., 609 A.2d 1131 (1992), cert. denied, 508 U.S. 980, 113 S. Ct. 2983, 125 L. Ed. 2d 679 (1993).

Evidence that defendant had aided and abetted his co-defendant in the distribution of crack cocaine, and that his co-defendant, when arrested, possessed additional amounts of crack, was sufficient to support defendant's conviction for possession of drugs with intent to distribute. *Owens v. United States*, App. D.C., 688 A.2d 399 (1996).

Evidence was sufficient to support a conviction for possession of drugs with intent to distribute where the defendant had multiple packages of cocaine on his person, one of which was sold to a stranger who was introduced to the defendant by a third party, and after the sale, at the time of his arrest, the defendant possessed two additional bags of crack and a large sum of money. *Owens v. United States*, App. D.C., 688 A.2d 399 (1996).

Evidence insufficient to support conviction. *Speight v. United States*, App. D.C., 599 A.2d 794 (1991).

Evidence was insufficient to support conviction for possession of heroin where the heroin was not found on the defendant during the initial search, but was found in the unlocked police car some 45 minutes after the defendant was taken in for processing, and was found under the seat in which the defendant had been sitting, and where the defendant had been handcuffed with a double locking device with his hands behind his back during the entire time he was in the police car. *Mitchell v. United States*, App. D.C., 683 A.2d 111 (1996).

Evidence was insufficient to sustain the charge that the defendant possessed drugs with intent to distribute while armed with a firearm. *Brown v. United States*, App. D.C., 691 A.2d 1167 (1997).

Conviction built upon inferences improper. — Evidence was insufficient to convict

under subsection (d) of this section where, in order to find that there was sufficient evidence to convict the defendant, the trial court had to make 4 key inferences from the evidence presented and the courts judgment rested one inference upon another. *Mitchell v. United States*, App. D.C., 683 A.2d 111 (1996).

Disqualifying convictions under subsection (c)(2). — A conviction of distribution “as an accommodation” outside the District is a disqualifying conviction under subsection (c)(2). *Shabazz v. United States*, App. D.C., 606 A.2d 191 (1992).

A conclusion that an appellant’s convictions for distribution of a controlled substance as an accommodation would not be disqualifying offenses would produce the anomalous result of permitting those with a prior conviction of not-for-profit distribution of a controlled substance outside the District to qualify for sentencing under the addict exception, while denying consideration under the addict exception to those who engaged in identical conduct in the District. *Shabazz v. United States*, App. D.C., 606 A.2d 191 (1992).

Expert identification of cocaine cutting reagents held permissible. — Since the trial court could have concluded that the possession of cutting reagents used to dilute cocaine was probative of appellant’s knowledge of the presence of cocaine under his bed and that its probative value outweighed its prejudicial impact, the trial court did not abuse its discretion in permitting them to be identified by expert testimony. *Hawkins v. United States*, App. D.C., 482 A.2d 1230 (1984).

Statement of codefendant who pled guilty. — Codefendant’s statement that defendant was not involved in the drug sale was not against codefendant’s penal interest because it did not expose him to any greater criminal liability than that to which he had already exposed himself by pleading guilty. *Bedney v. United States*, App. D.C., 684 A.2d 759 (1996).

Characterization of codefendant as “runners.” — References to codefendant as a “runner” by police sergeant during trial was of a nonexpert nature and was based entirely on his own observations, and held non-prejudicial. *Bedney v. United States*, App. D.C., 684 A.2d 759 (1996).

Erroneous instructions deemed harmless. — Trial judge and prosecutor erred in instructing the jury that the judge had “wide latitude” in sentencing appellant under this section, but such errors were harmless. *Brown v. United States*, App. D.C., 554 A.2d 1157 (1989).

Judge’s response to jury inquiry sent to him during jury’s deliberations, that the chemical analysis of the drugs in question “is not open to challenge” and that the jurors were required to accept that analysis as accurate, was, at least

in part, erroneous, but viewed in its proper context, the error was harmless. *Helm v. United States*, App. D.C., 555 A.2d 465 (1989).

Erroneous instruction required reversal. — Conviction for possession with intent to distribute a controlled substance in violation of subsection (a) was reversed where court gave the instruction for simple possession rather than for possession with intent to distribute; thus, the jury was never told that, in order to convict, it must be satisfied that the government had proved that defendant had the specific intent to distribute. *Cash v. United States*, App. D.C., 648 A.2d 964 (1994).

“Acquittal first” instruction constituted reversible error. — Giving an instruction to the jury that it must reach a unanimous agreement on the greater offense before it could consider the lesser, sometimes known as the “acquittal first” instruction, constituted reversible error. *Parker v. United States*, App. D.C., 601 A.2d 45 (1991).

Sentencing. — Conspiracy to distribute heroin is a felony which relates to narcotic drugs. It is considered an offense for purposes of sentence enhancement of a present distribution conviction. *Pearsall v. United States*, App. D.C., 636 A.2d 966, cert. denied, 513 U.S. 843, 115 S. Ct. 133, 130 L. Ed. 2d 76 (1994).

Despite troubling implications in the sentencing judge’s language, appellate court was not convinced that a sentence of one year in prison for conviction on one count of possession of marijuana rested upon improper considerations, as the judge’s decision to order a presentence report signalled an intent to sentence defendant based upon his background and individual circumstances. *Coles v. United States*, App. D.C., 682 A.2d 167 (1996), cert. denied, — U.S. —, 117 S. Ct. 751, 136 L. Ed. 2d 688 (1997).

Error in sentencing. — A trial judge may correct a sentencing error four days after it was made. Amendment of an original sentence of “seven to 12 years”, to “seven to 21 years,” as required by law, was proper. *Blakeney v. United States*, App. D.C., 653 A.2d 365 (1995).

Grant of probation under subsection (e). — The provisions of § 24-104 apply to probations granted under subsection (e). *Neal v. United States*, App. D.C., 571 A.2d 222 (1990).

Placement upon probation without adjudication of guilt. — Where a government witness has served or is serving a probationary term imposed under subsection (e) of this section, the witness’s treatment under that subsection does not qualify as a “prior conviction” for impeachment purposes under § 14-305(b). *Twitty v. United States*, App. D.C., 541 A.2d 612 (1988), cert. denied, 494 U.S. 1008, 110 S. Ct. 1307, 108 L. Ed. 2d 483 (1990).

Appeal after imposition of probation. — A criminal defendant may prosecute an appeal after a jury finding of guilty and an imposition

of 180 days probation pursuant to subsection (e)(1) of this section. *Mozingo v. United States*, App. D.C., 503 A.2d 1238 (1986).

Permitting probation to expire without dismissal or adjudication of guilt. — The legislative history states unambiguously that if a defendant violates conditions of his probation, the Court may, but is not required to, enter an adjudication of guilt. The alternative, while not clearly delineated, must be for the Court to refrain from entering an adjudication of guilt and simply permit probation to expire. *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

The intermediate option of permitting probation to expire without either dismissing the proceedings or entering an adjudication of guilt is consistent with the language and purpose of this section. *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

Harmless error. — Although judge's ruling that police form was inadmissible prevented defendant from being able to show that another person was "clearly linked" to the same activities for which defendant was standing trial, any error was harmless because there was ample evidence before the jury of defendant's mistaken identity theory and the evidence that defendant sought to introduce through the form would not have indicated "some reasonable possibility" of mistaken identity. *Watson v. United States*, App. D.C., 612 A.2d 179 (1992), overruled in part, *Winfield v. United States*, App. D.C., 676 A.2d 1 (1996).

Expungement. — In order to qualify for expungement, defendant's compliance while on probation should be virtually perfect. *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

Cited in *United States v. Taylor*, 689 F.2d 1107 (D.C. Cir. 1982); *United States v. Williams*, 110 WLR 1601 (Super. Ct. 1982); *Thompson v. United States*, App. D.C., 472 A.2d 899 (1984); *Carpenter v. United States*, App. D.C., 475 A.2d 369 (1984); *Patterson v. United States*, App. D.C., 479 A.2d 335 (1984); *Nelson v. United States*, App. D.C., 479 A.2d 340 (1984); *Davis v. United States*, App. D.C., 482 A.2d 783 (1984); *Edwards v. United States*, App. D.C., 483 A.2d 682 (1984); *Dyson v. United States*, App. D.C., 485 A.2d 194 (1984); *Reed v. United States*, App. D.C., 485 A.2d 613 (1984); *United States v. Alatishe*, 616 F. Supp. 1406 (D.D.C. 1985); *Greenhow v. United States*, App. D.C., 490 A.2d 1130 (1985); *Allen v. United States*, App. D.C., 496 A.2d 1046 (1985); *Bigelow v. United States*, App. D.C., 498 A.2d 210 (1985), dismissed sub nom. *Bigelow v. Knight*, 737 F. Supp. 669 (1990); *Chavarria v. United States*, App. D.C., 505 A.2d 59 (1986); *Wright v. United States*, App. D.C., 505 A.2d 470, modified, App. D.C., 510 A.2d 223 (1986); *Davis v. United States*, App. D.C., 509 A.2d 105 (1986); *Lomax v. United States*, App. D.C., 510 A.2d 225

(1986); *Brame v. Palmer*, App. D.C., 510 A.2d 229 (1986); *James v. United States*, App. D.C., 514 A.2d 793 (1986); *Hazel v. United States*, App. D.C., 516 A.2d 944 (1986); *Montgomery v. United States*, App. D.C., 517 A.2d 313 (1986); *Hinnant v. United States*, App. D.C., 520 A.2d 292 (1987); *Richardson v. United States*, App. D.C., 520 A.2d 692 (1987); *Barnett v. United States*, App. D.C., 525 A.2d 197 (1987); *Harrison v. United States*, App. D.C., 526 A.2d 1377 (1987); *McMillan v. United States*, App. D.C., 527 A.2d 739 (1987); *Resper v. United States*, App. D.C., 527 A.2d 1257 (1987); *Harrison v. United States*, App. D.C., 528 A.2d 1238 (1987); *United States v. Edelen*, App. D.C., 529 A.2d 774 (1987); *In re D.J.*, App. D.C., 532 A.2d 138 (1987); *Pulley v. United States*, App. D.C., 532 A.2d 651 (1987); *Potter v. United States*, App. D.C., 534 A.2d 943 (1987); *United States v. Golden*, 115 WLR 733 (Super. Ct. 1987); *United States v. Wheeler*, 115 WLR 2025 (Super. Ct. 1987); *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987); *McConnell v. United States*, App. D.C., 537 A.2d 211 (1988); *Jenkins v. United States*, App. D.C., 541 A.2d 1269 (1988); *Hill v. United States*, App. D.C., 541 A.2d 1285 (1988); *Brown v. United States*, App. D.C., 542 A.2d 1231 (1988); *Hinkel v. United States*, App. D.C., 544 A.2d 283 (1988); *Bailey v. United States*, App. D.C., 544 A.2d 289 (1988); *\$345.00 in United States Currency v. District of Columbia*, App. D.C., 544 A.2d 680 (1988); *Jones v. United States*, App. D.C., 544 A.2d 1250 (1988); *Thompson v. United States*, App. D.C., 546 A.2d 414 (1988); *Flemming v. United States*, App. D.C., 546 A.2d 1001 (1988); *Hemsley v. United States*, App. D.C., 547 A.2d 132 (1988); *Fields v. United States*, App. D.C., 547 A.2d 138 (1988); *Gray v. United States*, App. D.C., 549 A.2d 347 (1988); *King v. United States*, App. D.C., 550 A.2d 348 (1988); *Deneal v. United States*, App. D.C., 551 A.2d 1312 (1988); *United States v. Hubbard*, 116 WLR 181 (Super. Ct. 1988); *United States v. Towles*, 116 WLR 501 (Super. Ct. 1988); *United States v. Lohman*, 116 WLR 653 (Super. Ct. 1988); *United States v. McCray*, 116 WLR 677 (Super. Ct. 1988); *United States v. Williams*, 116 WLR 1005 (Super. Ct. 1988); *United States v. Gabin*, 116 WLR 1813 (Super. Ct. 1988); *Brown v. United States*, App. D.C., 555 A.2d 1034 (1989); *Gethers v. United States*, App. D.C., 556 A.2d 201 (1989); *Witherspoon v. United States*, App. D.C., 557 A.2d 587 (1989); *Poteat v. United States*, App. D.C., 559 A.2d 334 (1989); *Hall v. United States*, App. D.C., 559 A.2d 1321 (1989); *Porter v. United States*, App. D.C., 561 A.2d 994 (1989); *Goldston v. United States*, App. D.C., 562 A.2d 96 (1989); *Lee v. United States*, App. D.C., 562 A.2d 1202 (1989); *Seeney v. United States*, App. D.C., 563 A.2d 1081 (1989), cert. denied, 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124 (1990); *White v. United States*, App.

- D.C., 564 A.2d 379 (1989); *Irick v. United States*, App. D.C., 565 A.2d 26 (1989); *Speight v. United States*, App. D.C., 569 A.2d 124 (1989); *United States v. Dixon*, 117 WLR 9 (Super. Ct. 1989); *Patterson v. District of Columbia*, 117 WLR 741 (Super. Ct. 1989); *United States v. Brace*, 117 WLR 2413 (Super. Ct. 1989); *Bigelow v. Knight*, 737 F. Supp. 669 (D.D.C. 1990); *Mack v. United States*, App. D.C., 570 A.2d 777 (1990); *Patterson v. United States*, App. D.C., 570 A.2d 1198 (1990); *Swisher v. United States*, App. D.C., 572 A.2d 85 (1990); *In re W.A.F.*, App. D.C., 573 A.2d 1264 (1990); *Ray v. United States*, App. D.C., 575 A.2d 1196 (1990); *Bean v. United States*, App. D.C., 576 A.2d 187 (1990); *Klahr v. District of Columbia*, App. D.C., 576 A.2d 718 (1990); *In re F.G.*, App. D.C., 576 A.2d 724 (1990); *Simpson v. United States*, App. D.C., 576 A.2d 1336 (1990); *In re T.M.*, App. D.C., 577 A.2d 1149 (1990); *Hardy v. United States*, App. D.C., 578 A.2d 178 (1990); *Jones v. United States*, App. D.C., 579 A.2d 250 (1990); *Leeper v. United States*, App. D.C., 579 A.2d 695 (1990); *Ware v. United States*, App. D.C., 579 A.2d 701 (1990); *Brown v. United States*, App. D.C., 579 A.2d 1158 (1990); *United States v. Alston*, App. D.C., 580 A.2d 587 (1990); *Kelly v. United States*, App. D.C., 580 A.2d 1282 (1990); *Patterson v. United States*, App. D.C., 580 A.2d 1319 (1990); *Belton v. United States*, App. D.C., 581 A.2d 1205 (1990); *Gordon v. United States*, App. D.C., 582 A.2d 944 (1990); *Best v. United States*, App. D.C., 582 A.2d 966 (1990); *In re T.T.C.*, App. D.C., 583 A.2d 986 (1990); *Haywood v. United States*, App. D.C., 584 A.2d 552 (1990); *United States v. Alston*, 118 WLR 819 (Super. Ct. 1990); *United States v. Barnes*, 118 WLR 1709 (Super. Ct. 1990); *Green v. United States*, App. D.C., 584 A.2d 599 (1991); *Sykes v. United States*, App. D.C., 585 A.2d 1335 (1991); *Guadalupe v. 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Shuler, 123 WLR 693 (Super. Ct. 1995); *Noble v. United States Parole Comm'n*, 82 F.3d 1108 (D.C. Cir. 1996); *Foote v. United States*, App. D.C., 670 A.2d 366 (1996); *Duvall v. United States*, App. D.C., 676 A.2d 448 (1996); *Dickerson v. United States*, App. D.C., 677 A.2d 509 (1996); *Funchess v. United States*, App. D.C., 677 A.2d 1019 (1996); *Bell v. United States*, App. D.C., 677 A.2d 1044 (1996); *Oliver v. United States*, App. D.C., 682 A.2d 186 (1996); *Johnson v. United States*, App. D.C., 683 A.2d 1087 (1996); *Brooks v. United States*, App. D.C., 683 A.2d 1369 (1995); *Jackson v. United States*, App. D.C., 683 A.2d 1379 (1996); *Turner v. United States*, App. D.C., 684 A.2d 313 (1996); *Johnson v. United States*, App. D.C., 686 A.2d 200 (1996); *In re S.J.*, App. D.C., 686 A.2d 1024 (1996); *Heard v. United States*, App. D.C., 686 A.2d 1026 (1996); *United States v. White*, App. D.C., 689 A.2d 535 (1997); *United States v. Jackson*, 113 F.3d 249 (D.C. Cir. 1997), cert. denied, — U.S. —, 118 S. Ct. 252, 139 L. Ed. 2d 180 (1997); *United States Parole Comm'n v. Noble*, App. D.C., 693 A.2d 1084 (1997); *Dantzler v. United States*, App. D.C., 696 A.2d 1349 (1997); *Robinson v. United States*, App. D.C., 697 A.2d 787 (1997); *Gonzalez v. United States*, App. D.C., 697 A.2d 819 (1997); *Greer v. United States*, App. D.C., 697 A.2d 1207 (1997); *United States v. Turner*, App. D.C., 699 A.2d 1125 (1997); *Gibson v. United States*, App. D.C., 700 A.2d 776 (1997).

§ 33-542. Prohibited acts B; penalties.

(a) It is unlawful for any person:

(1) Who is subject to subchapter III of this chapter to distribute or dispense a controlled substance in violation of § 33-538;

(2) Who is a registrant, to manufacture a controlled substance not authorized by registration, or to distribute or dispense a controlled substance not authorized by registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(4) To refuse an entry into any premises for any inspection authorized by this chapter;

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter;

(6) Who is a law-enforcement official, as designated by the Mayor, to divulge any knowledge relating to the records, order forms, or prescriptions of registrants which he or she received by virtue of his or her office, except in connection with officially authorized duties or in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to

which prosecution or proceeding the registrant to whom such records, order forms, or prescriptions relate is a party; or

(7) To use to his or her own advantage or to reveal, other than to duly authorized officers or employees of the District of Columbia or the United States, or to the courts when relevant in any judicial proceeding under this subchapter or subchapter III of this chapter, any information acquired in the course of an authorized inspection concerning any method or process which as a trade secret is entitled to protection.

(b) Except as provided for in subsection (c) of this section, any person who violates this section shall, with respect to any violation, be subject to a civil penalty of not more than \$50,000.

(c) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall be guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$50,000, or both. (Aug. 5, 1981, D.C. Law 4-29, § 402, 28 DCR 3081.)

Section references. — This section is referred to in § 23-546.

Legislative history of Law 4-29. — See note to § 33-501.

Evidence sufficient for conviction. — Evidence was sufficient to convict defendant on

drug distribution activities in her home. *Williams v. United States*, App. D.C., 604 A.2d 420 (1992).

Cited in *Williamson v. District of Columbia Bd. of Dentistry*, App. D.C., 647 A.2d 389 (1994).

§ 33-543. Prohibited acts C; penalties.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 33-537;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than 4 years, fined not more than \$50,000, or both. (Aug. 5, 1981, D.C. Law 4-29, § 403, 28 DCR 3081.)

Section references. — This section is referred to in § 23-546.

Legislative history of Law 4-29. — See note to § 33-501.

Cited in Williams v. United States, App. D.C., 571 A.2d 212 (1990).

§ 33-543a. Prohibited acts D; penalties.

(a) It shall be unlawful for any person to knowingly open or maintain any place to manufacture, distribute, or store for the purpose of manufacture or distribution a narcotic or abusive drug.

(b) Any person who violates this section shall be imprisoned for not less than 5 years nor more than 25 years, fined not more than \$500,000, or both. (Aug. 5, 1981, D.C. Law 4-29, § 411, as added June 13, 1990, D.C. Law 8-138, § 2(e), 37 DCR 2638.)

Section references. — This section is referred to in § 33-571.

Legislative history of Law 8-50. — See note to § 33-501.

Legislative history of Law 8-138. — Law 8-138, the "Omnibus Narcotic and Abusive Drug Interdiction Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-495, which was referred to the Committee

on the Judiciary. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-194 and transmitted to both Houses of Congress for its review.

Mayor to implement public information program. — See note to § 33-501.

§ 33-544. Penalties under other laws.

Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. (Aug. 5, 1981, D.C. Law 4-29, § 404, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Cited in United States v. Fairnot, 116 WLR

2205 (Super. Ct. 1988); Speight v. United States, App. D.C., 569 A.2d 124 (1989).

§ 33-545. Effect of acquittal or conviction under federal law.

No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under any United States statute governing the sale or distribution of controlled substances of the same act or omission which is alleged to constitute a violation of this chapter. (Aug. 5, 1981, D.C. Law 4-29, § 405, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-546. Distribution to minors.

(a) Any person who is 21 years of age or over and who violates § 33-541(a) by distributing a controlled substance which is listed in Schedule I or II and which is a narcotic drug, phencyclidine, or a phencyclidine immediate precursor to a person who is under 18 years of age may be punished by the fine

authorized by § 33-541(a)(2)(A), by a term of imprisonment of up to twice that authorized by § 33-541(a)(2)(A), or by both.

(b) Any person who is 21 years of age or over and who violates § 33-541(a) by distributing for remuneration any other controlled substance which is listed in Schedule I, II, III, IV, or V, except for phencyclidine or a phencyclidine immediate precursor, to a person who is under 18 years of age may be punished by the fine authorized by § 33-541(a)(2)(B), (C), or (D), respectively, by a term of imprisonment up to twice that authorized by § 33-541(a)(2)(B), (C), or (D), respectively, or both. (Aug. 5, 1981, D.C. Law 4-29, § 406, 28 DCR 3081; Mar. 15, 1985, D.C. Law 5-171, § 2(b), 32 DCR 730.)

Section references. — This section is referred to in § 33-548.

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 5-121. — See note to § 33-541.

Legislative history of Law 5-171. — See note to § 33-541.

Proof required. — This section does not require the government to prove a defendant knew the person to whom he distributed drugs or employed in distribution was a minor. *Outlaw v. United States*, App. D.C., 604 A.2d 873 (1992).

§ 33-547. Enlistment of minors to distribute.

(a) Any person who is 21 years of age or over and who enlists, hires, contracts, or encourages any person under 18 years of age to sell or distribute any controlled substance, in violation of § 33-541(a), for the profit or benefit of such person who enlists, hires, contracts, or encourages this criminal activity shall be punished for sale or distribution in the same manner as if that person directly sold or distributed the controlled substance.

(b) Anyone found guilty of subsection (a) of this section shall be subject to the following additional penalties:

(1) Upon a first conviction the party may be imprisoned for not more than 10 years, fined not more than \$10,000, or both;

(2) Upon a second or subsequent conviction, the party may be imprisoned for not more than 20 years, fined not more than \$20,000, or both. (Aug. 5, 1981, D.C. Law 4-29, § 407, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Proof required. — This section does not require the government to prove a defendant knew the person to whom he distributed drugs or employed in distribution was a minor. *Out-*

law v. United States, App. D.C., 604 A.2d 873 (1992).

Cited in *United States v. Chin*, 981 F.2d 1275 (D.C. Cir. 1992), cert. denied, 508 U.S. 923, 113 S. Ct. 2377, 124 L. Ed. 2d 281 (1993).

§ 33-547.1. Drug free zones.

(a) All areas within 1000 feet of a public or private day care center, elementary school, vocational school, secondary school, junior college, college, or university, or any public swimming pool, playground, video arcade, or youth center, or an event sponsored by any of the above entities shall be declared a drug free zone.

(b) Any person who violates § 33-541(a) by distributing or possessing with the intent to distribute a controlled substance which is listed in Schedule I, II,

III, IV, or V within a drug free zone shall be punished by a fine up to twice that otherwise authorized by this chapter to be imposed, by a term of imprisonment up to twice that otherwise imposed, or both. (Aug. 5, 1981, D.C. Law 4-29, § 407a, as added Mar. 21, 1995, D.C. Law 10-229, § 2(b), 42 DCR 9.)

Legislative history of Law 10-229. — See note to § 33-501.

§ 33-548. Second or subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense if, prior to commission of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

(c) A person who is convicted of violating § 33-546 may be sentenced according to the provisions of § 33-546 or according to the provisions of this section, but not both. (Aug. 5, 1981, D.C. Law 4-29, § 408, 28 DCR 3081.)

Section references. — This section is referred to in § 33-541.

Legislative history of Law 4-29. — See note to § 33-501.

Cited in *United States v. Fairnot*, 116 WLR 2205 (Super. Ct. 1988); *Speight v. United*

States, App. D.C., 569 A.2d 124 (1989); *United States v. Joseph*, 122 WLR 2337 (Super. Ct. 1994); *Cash v. United States*, App. D.C., 648 A.2d 964 (1994); *Brown v. United States*, App. D.C., 675 A.2d 953 (1996).

§ 33-549. Attempt; conspiracy.

Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. (Aug. 5, 1981, D.C. Law 4-29, § 409, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Applicability. — Mandatory minimum sentence provision was not applicable to cases in which defendants had entered pleas to attempted distribution. *United States v. Rogers*, 115 WLR 221 (Super. Ct. 1987).

The defense of impossibility is not available to one charged with the crime of attempted possession with intent to distribute controlled substances. *Seeney v. United States*, App. D.C., 563 A.2d 1081 (1989), cert. denied, 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124 (1990).

Proof of certain elements not required for attempt conviction. — It is not essential for the government to prove usability in order

to establish an attempt to possess an illegal substance with intent to distribute it. *Seeney v. United States*, App. D.C., 563 A.2d 1081 (1989), cert. denied, 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124 (1990).

With respect to the offense of attempted possession with intent to distribute, it is not necessary to establish that the substance a defendant attempted to possess was the proscribed substance. *Seeney v. United States*, App. D.C., 563 A.2d 1081 (1989), cert. denied, 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124 (1990).

To prove that defendant attempted to distribute cocaine, government was required to prove defendant had intent to commit crime and performed some act toward commission, but

was not required to prove substance actually was cocaine. *Thompson v. United States*, App. D.C., 678 A.2d 24 (1996).

Sentencing. — Conspiracy to distribute heroin is a felony which relates to narcotic drugs. It is considered an offense for purposes of sentence enhancement of a present distribution conviction. *Pearsall v. United States*, App. D.C., 636 A.2d 966, cert. denied, 513 U.S. 843, 115 S. Ct. 133, 130 L. Ed. 2d 76 (1994).

Failure to instruct jury on specific in-

tent to distribute was reversible error. — Defendant's conviction on this count was reversed where the court inadvertently omitted from the instructions the element of the offense requiring the government to establish that the defendant possessed marijuana with the specific intent to distribute it. *Samson v. United States*, App. D.C., 692 A.2d 437 (1997).

Cited in *Lyons v. United States*, App. D.C., 683 A.2d 1066 (1996); *Lyons v. United States*, App. D.C., 683 A.2d 1080 (1996).

§ 33-550. Possession of drug paraphernalia.

Whoever, except for a physician, dentist, chiroprapist, or veterinarian licensed in the District of Columbia or a state, registered nurse, registered embalmer, manufacturer or dealer in embalming supplies, wholesale druggist, industrial user, official of any government having possession of the proscribed articles by reason of his or her official duties, nurse or medical laboratory technician acting under the direction of a physician or dentist, employees of a hospital or medical facility acting under the direction of its superintendent or officer in immediate charge, person engaged in chemical, clinical, pharmaceutical or other scientific research, acting in the course of their professional duties, has in his or her possession a hypodermic needle, hypodermic syringe, or other instrument that has on or in it any quantity (including a trace) of a controlled substance with intent to use it for administration of a controlled substance by subcutaneous injection in a human being shall be fined not more than \$1000 or imprisoned for not more than 180 days, or both. (Aug. 5, 1981, D.C. Law 4-29, § 410, 28 DCR 3081; Aug. 20, 1994, D.C. Law 10-151, § 112(b), 41 DCR 2608.)

Cross references. — As to drug paraphernalia offenses, see Chapter 6 of this title.

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 8-50. — See note to § 33-501.

Legislative history of Law 10-151. — See note to § 33-541.

Legislative intent. — The Council intended in D.C. Law 4-29 to repeal § 22-3601 solely as it applied to narcotics paraphernalia and to substitute therefor this section, a specific narcotics paraphernalia possession provision. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

Penalties prescribed by this section govern case involving narcotics paraphernalia possession reversed and remanded after August 1981. — While a defendant's prosecution under § 22-3601 prior to August 5, 1981, remains unaffected by D.C. Law 4-29 (which repealed § 22-3601, placing possession of narcotics paraphernalia under this section), when defendant's case was reversed and remanded after August 1981, the case fell within the sentencing guidelines of § 33-561 so that

the court on remand should adhere to the lesser penalties in this section rather than the greater penalties under § 22-3601. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

"Narcotics paraphernalia." — Narcotics paraphernalia are considered implements that are usually employed in the crime of illegal administration of narcotics. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

Presence, proximity, and association may establish prima facie case of drug possession when colored by evidence of an on-going criminal operation of which the possession is a part. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

Elements of constructive possession. — Constructive possession exists where a person is knowingly in a position or has the right to exercise dominion and control over the item. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

Proof establishing constructive possession. — To prove constructive possession by the defendant, the government is required to establish that the paraphernalia were conveniently accessible to defendant and that he knew of

their presence. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

Direct proof of knowledge of presence of paraphernalia is unnecessary; the jury could infer knowledge from circumstantial evidence. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

From the presence of the paraphernalia and drugs in plain view on the car seat beside the defendant, the jury could infer defendant's knowledge of their presence. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

Guilt of lesser-included offense question for jury. — Where defendant was charged with possession of drug paraphernalia in violation of this section and was later acquitted of this charge by a judge, consideration of guilt under

a lesser-included paraphernalia offense defined in § 33-603 was for a jury, and not for a judge. *Chambers v. United States*, App. D.C., 564 A.2d 26 (1989).

Variance between allegation and proof was not fatal where the information charged defendant with illegal possession of drug paraphernalia that could be administered subcutaneously, under this section, while the government proved that defendant possessed a pipe used to ingest drugs into the body, an offense under § 33-603(a). *Byrd v. United States*, App. D.C., 579 A.2d 725 (1990).

Cited in *United States v. Gordon*, 829 F.2d 119 (D.C. Cir. 1987); *Carr v. United States*, App. D.C., 585 A.2d 158 (1991); *Berger v. District of Columbia*, App. D.C., 597 A.2d 407 (1991).

Subchapter V. Enforcement and Administrative Provisions.

§ 33-551. Cooperative arrangements; confidentiality.

(a) The Mayor shall cooperate with the Board of Education, federal agencies, and other state agencies in discharging the Mayor's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, the Mayor may:

(1) Arrange for the exchange of general information among governmental officials concerning the general use and abuse of controlled substances; and

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement within the District of Columbia.

(b) Results, information, and evidence received from the D.E.A. relating to the regulatory functions of this chapter, including results of inspections conducted by it, may be relied and acted upon by the Mayor in the exercise of the Mayor's regulatory functions under this chapter.

(c)(1) A practitioner engaged in medical practice or research shall not nor shall be compelled to:

(A) Furnish to the Mayor the name or identity of a patient or research subject without the prior consent of the patient or research subject; or

(B) Furnish the name or identity of an individual that the practitioner is obligated to keep confidential in any civil, criminal, administrative, legislative, or other proceedings in the District of Columbia without prior consent of such individual.

(2) This section per se shall not limit, in a criminal investigation or prosecution or in an administrative proceeding by the Commission on Licensure to Practice the Healing Art in the District of Columbia, the authority to subpoena dispensing logs or other records of a practitioner containing information concerning the sale, prescription, or distribution of controlled substances under this chapter. The court may order sealed any information furnished without consent, pursuant to the provisions of this subsection. (Aug. 5, 1981, D.C. Law 4-29, § 501, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-552. Forfeitures.

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, or delivering any controlled substance in violation of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (1) or (2) of this subsection; provided, that:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent;

(C) Repealed; or

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of this chapter;

(6) All cash or currency which has been used, or intended for use, in violation of this chapter;

(7) Everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of this chapter.

(A) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(B) All moneys, coins and currency found in close proximity to forfeitable controlled substances, forfeitable drug manufacturing or distributing paraphernalia or records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon any claimant of the property to rebut this presumption; and

(8) Any real property that is used or intended to be used in any manner to commit or facilitate the commission of a violation of this chapter, except that:

(A) No real property shall be forfeited under this paragraph by reason of an act or omission established by the owner to have been committed or omitted without the knowledge and consent of the owner;

(B) Real property shall not be subject to forfeiture for a violation of § 33-541(d); and

(C) The forfeiture of real property encumbered by a bona fide security interest shall be subject to the interest of the secured party if the secured party had no knowledge and did not consent to the act or omission that constituted a violation of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d)(1) All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, which come into the custody of law-enforcement officials of the District of Columbia shall be delivered promptly to the United States Department of Justice or its delegate for disposal, except that controlled substances which may be needed as evidence in any criminal or administrative proceeding pursuant to the provisions of this chapter or the provisions of any federal controlled substances law shall, upon delivery to the United States Department of Justice, not be so disposed of until the public official in charge of prosecuting any violation under this chapter shall certify that such controlled substances are no longer needed as evidence.

(2) Property, other than controlled substances, taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the Mayor. When property is seized under this chapter, the Mayor shall:

(A) Place the property under seal;

(B) Remove the property to a place designated by the Mayor; or

(C) Remove the property to an appropriate location for disposition in accordance with law.

(3)(A) After a proper showing of probable cause for the seizure is made, the Mayor shall cause notice of the seizure of property, other than controlled substances, and the Mayor's intention to forfeit and sell or otherwise dispose of the property in accordance with this chapter to be published for at least 2 successive weeks in a local newspaper of general circulation. In addition, the Mayor shall provide written notice of the seizure together with information on the applicable procedures for claiming the property to each party who is known or in the exercise of reasonable diligence should be known by the Mayor to have a right of claim to the seized property. Notice to each party shall be by registered or certified mail, return receipt requested.

(B) Any person claiming the property may, at any time within 30 days from the date of receipt of notice of seizure, file with the Mayor a claim stating his or her interest in the property. Upon the filing of a claim, the claimant shall give a bond to the District government in the penal sum of \$2,500 or 10% of the

fair market value of the claimed property (as appraised by the Chief of the Metropolitan Police Department), whichever is lower, but not less than \$250, with sureties to be approved by the Mayor. In case of forfeiture of the claimed property, the costs and expenses of the forfeiture proceedings shall be deducted from the bonds. Any costs that exceed the amount of the bond shall be paid by the claimant. In determining the fair market value of the property seized, the Chief of the Metropolitan Police Department shall consider any verifiable and reasonable evidence of value that the claimant may present. The balance of the proceeds shall be transferred to the Drug Interdiction and Demand Reduction Fund ("Fund") created by subchapter VII of this chapter. The Fund shall remain available until expended regardless of the expiration of the fiscal year in which the proceeds were collected. The Fund shall be distributed in the following descending order of priority:

(i) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and

(ii) To provide grants to fund community-based drug education, prevention, and demand reduction programs;

(C) If a claim and bond (or application for a waiver of bond) are not filed within 30 days of receipt of notice, and if either the property seized has a value of less than \$250,000 or the property seized is a conveyance subject to forfeiture under the provisions of paragraph (a)(4) of this section, the Mayor, after determining that the property is forfeitable under this chapter, shall declare the property forfeited and shall dispose of the property in accordance with the provisions of paragraph (4) of this subsection. If the Mayor determines that the seized property is not forfeitable under this chapter and is not otherwise subject to forfeiture, the Mayor shall return the property to its rightful owner.

(D) If it appears to the Mayor that any property seized under this paragraph is liable to perish, waste, or be greatly reduced in value by the keeping, or that the expense of keeping is disproportionate to the value of the property, the Mayor may proceed to advertise and sell the property at auction or otherwise dispose of the property under rules promulgated by the Mayor.

(E) If the property seized is not forfeited or disposed of in accordance with subparagraphs (C) and (D) of this paragraph, the Mayor shall request the Corporation Counsel to apply to the Superior Court of the District of Columbia for forfeiture of the property in accordance with the rules of the Superior Court of the District of Columbia.

(F) Whenever any person who has an interest in forfeited property files with the Mayor, either before or after the sale or disposition of property, a petition for remission or mitigation of the forfeiture, the Mayor shall remit or mitigate the forfeiture upon the terms and conditions as the Mayor deems reasonable if the Mayor finds:

(i) That the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or

(ii) That mitigating circumstances justify the remission or mitigation of the forfeiture.

(G) In all suits or actions brought for forfeiture of any property seized under this chapter when the property is claimed by any person, the burden of proof shall be on the claimant once the Mayor has established probable cause as provided in subsection (a) of this section.

(H) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this paragraph. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(4) When property, other than controlled substances, is forfeited under this chapter, the Mayor shall:

(A) Retain it for official use;

(B) Sell that which is not required by law to be destroyed and which is not harmful to the public. All proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds. The balance of the proceeds shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs which shall serve to rehabilitate drug addicts, educate citizens, or prevent drug addiction;

(C) Remove the property for disposition in accordance with law; or

(D) Forward it to the D.E.A. for disposition.

(e) During the course of any civil forfeiture proceeding pursuant to this section, which involves real property, the Mayor shall file a notice of the proceeding with the Recorder of Deeds. The notice shall include the legal description of the property and indicate that civil forfeiture is being sought. The Recorder of Deeds shall record the notice against the title of any real property for which civil forfeiture is being sought. Upon resolution of the proceeding, the Recorder of Deeds shall be notified of the disposition of the action. (Aug. 5, 1981, D.C. Law 4-29, § 502, 28 DCR 3081; Apr. 3, 1982, D.C. Law 4-96, § 2, 29 DCR 762; Sept. 29, 1988, D.C. Law 7-162, § 2, 35 DCR 5733; Dec. 12, 1989, 103 Stat. 1901, Pub. L. 101-223, § 6; June 13, 1990, D.C. Law 8-138, § 2(d), 37 DCR 2638; Sept. 26, 1992, D.C. Law 9-155, § 2(a), 39 DCR 5679; Mar. 25, 1993, D.C. Law 9-253, § 3, 40 DCR 790; May 16, 1995, D.C. Law 10-255, § 25, 41 DCR 5193.)

Cross references. — As to return of property by Property Clerk, see § 4-157.

As to property subject to forfeiture under Drug Paraphernalia Act of 1982, see § 33-604.

Section references. — This section is referred to in §§ 22-752, 22-2723 and 33-571.

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 4-96. — Law 4-96 was introduced in Council and assigned Bill No. 4-307, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-154 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-162. — Law 7-162 was introduced in Council and assigned Bill No. 7-361, which was referred to the Committee on the Judiciary. The Bill was adopted on the first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-217 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-50. — See note to § 33-501.

Legislative history of Law 8-138. — See note to § 33-543a.

Legislative history of Law 9-123. — See note to § 33-573.

Legislative history of Law 9-155. — See note to § 33-573.

Legislative history of Law 9-253. — Law 9-253 was introduced in Council and assigned Bill No. 9-154, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-399 and transmitted to both Houses of Congress for its review. D.C. Law 9-254 became effective on March 25, 1993.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Mayor to implement public information program. — See note to § 33-501.

Construction. — Forfeiture statutes are to be strictly construed in favor of the person whose property is sought to be seized. This principle has been widely recognized in cases involving drug forfeiture statutes. *District of Columbia v. \$987.00 in U.S. Currency*, 115 WLR 1393 (Super. Ct. 1987).

Since a forfeiture statute is meant to punish and deter, it should be construed strictly against forfeiture. Hence, the forfeiture statute should be construed in a manner favorable to the person whose property is to be seized as is consistent with the fair principles of interpretation. *District of Columbia v. One (1) 1981 Datsun 200SX*, 115 WLR 645 (Super. Ct. 1987).

"The owner" construed. — The court rejected a construction of "owner" that relied exclusively on who held title to the vehicle.

Rather, it construed the word in such a way as to give effect to the objects and purposes of the statute. Although such a construction places weight on who holds title, the ultimate issue is who had the power and the legal right to permit its use by another. *District of Columbia v. One (1) 1981 Datsun 200SX*, 115 WLR 645 (Super. Ct. 1987).

Presumption to effect forfeiture. — The presumption in subsection (a)(7)(B) is not an essential component of a civil forfeiture statute. *District of Columbia v. \$987.00 in U.S. Currency*, 115 WLR 1393 (Super. Ct. 1987).

The application of the presumption to effect forfeiture of the money in respondent's pocket on account of its close proximity to drugs located in an opaque container two feet behind him would not be consistent with the due process clause of the Constitution, without evidence linking the money to drugs found in the locale. *District of Columbia v. \$987.00 in U.S. Currency*, 115 WLR 1393 (Super. Ct. 1987).

The statutory rebuttable presumption can only operate to require a claimant to come forward with some evidence to rebut the presumption, but once that has been accomplished, the entire burden of proving forfeiture by a preponderance of the evidence rests upon the District of Columbia as libellant. *District of Columbia v. \$4,095.00 in United States Currency*, 120 WLR 189 (Super. Ct. 1992).

The statutory rebuttal presumption cannot be relied upon to add to the evidence to establish a preponderance of the evidence, when the other evidence, viewed without the presumption, would not be sufficient to meet the preponderance of the evidence test. The District of Columbia must establish independent of the statutory presumption, once the claimant has presented some evidence rebutting the presumption, that it is entitled to the civil forfeiture by a preponderance of the evidence. *District of Columbia v. \$4,095.00 in United States Currency*, 120 WLR 189 (Super. Ct. 1992).

Respondent presented sufficient evidence to rebut the presumption in subparagraph (a)(7)(B). *District of Columbia v. \$4,095.00 in United States Currency*, 120 WLR 189 (Super. Ct. 1992).

Exemption from forfeiture. — Where the evidence presented at the hearing overwhelmingly established that the use of the automobile to facilitate the transportation of controlled substances was carried on wholly without the owner's knowledge or consent, absent additional evidence which might change this conclusion, the subject vehicle is exempt from forfeiture. *United States v. Golden*, 115 WLR 733 (Super. Ct. 1987).

Where defendant was charged with possession of cocaine under § 33-541, her car was not subject to forfeiture under subsection (a)(4)(C) even if she had actually used the car to trans-

port the cocaine. *United States v. Zarbough*, 115 WLR 273 (Super. Ct. 1987).

Default decree as sanction for noncompliance with discovery order held abuse of discretion. — See *Haynes v. District of Columbia*, App. D.C., 503 A.2d 1219 (1986).

Sanction civil and remedial. — The forfeiture sanction imposed by this section is civil and remedial in purpose and effect. \$345.00 in *United States Currency v. District of Columbia*, App. D.C., 544 A.2d 680 (1988).

Fourth Amendment requirements. — The absence of a warrant requirement in this section does not render it unconstitutional on its face, but any particular seizure and detention of property are subject to the Fourth Amendment requirement of reasonableness as determined in a nonadversary judicial review. A warrant need not be obtained prior to the seizure of property, but at a minimum, claimants from whom property has been seized have a right to a postseizure probable cause determination, at their request. *Patterson v. District of Columbia*, 117 WLR 741 (Super. Ct. 1989).

Quantum of proof. — Because an action

under this section is civil and remedial in purpose and effect, the government need only prove its case by a preponderance of the evidence. \$345.00 in *United States Currency v. District of Columbia*, App. D.C., 544 A.2d 680 (1988).

Sufficiency of evidence. — Evidence presented by the government was sufficient to support the judgment of forfeiture. \$345.00 in *United States Currency v. District of Columbia*, App. D.C., 544 A.2d 680 (1988).

Cited in *Wood v. Several Unknown Metro. Police Officers*, 835 F.2d 340 (D.C. Cir. 1987); *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988); *District of Columbia v. \$59.00 in United States Currency (Melvin King)*, 117 WLR 785 (Super. Ct. 1989); *Jamison v. United States*, App. D.C., 600 A.2d 65 (1991); *District of Columbia v. 313 M St.*, App. D.C., 633 A.2d 820 (1993); *District of Columbia v. Patterson*, App. D.C., 667 A.2d 1338 (1995); *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995); *United States v. Esparza*, 124 WLR 1541 (Super. Ct. 1996).

§ 33-553. Burden of proof.

(a) It is not necessary for the prosecution to negate any exemption or exception in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he or she is presumed not to be the holder of the registration or form. The burden of proof is upon him or her to rebut the presumption. (Aug. 5, 1981, D.C. Law 4-29, § 503, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Cited in *United States v. Mitchell*, 114 WLR 1257 (Super. Ct. 1986); *Smith v. United States*,

App. D.C., 522 A.2d 1274 (1987); *Finney v. United States*, App. D.C., 527 A.2d 733 (1987); *Patterson v. District of Columbia*, 117 WLR 741 (Super. Ct. 1989).

§ 33-554. Educational programs; research purposes.

(a) The Mayor shall establish and operate an educational program consisting of films, lectures, panel discussions, or whatever other educational device the Mayor deems necessary and appropriate to enlighten persons on the habitual use of controlled substances in general and to instill in persons participating in such a program a respect for the law and legal institutions.

(b) The Mayor shall cooperate with the Board of Education in preparing similar programs for school children with the purpose of preventing their abuse of controlled substances.

(c) The Mayor shall prepare and operate similar and appropriate programs for children found to be delinquent for violation of the provisions of this chapter.

(d) The Mayor may authorize the possession and distribution of controlled substances by persons engaged in research. Possession and distribution of controlled substances by such persons, in the course of their research and to the extent of the authorization, does not violate the provisions of this chapter. (Aug. 5, 1981, D.C. Law 4-29, § 504, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-555. Administrative inspections.

(a) The Mayor may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, the term “controlled premises” means:

(A) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (b) of this section, an officer or employee designated by the Mayor, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the Mayor may:

(A) Inspect and copy records required by this chapter to be kept;

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph (5) of this subsection, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(C) Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with § 33-557 nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(A) If the owner, operator, or agent in charge of the controlled premises consents;

(B) In situations presenting imminent danger to health or safety;

(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(E) In all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

(b) Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of the Superior Court of the District of Columbia, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the issuance of the warrant exist or that there is probable cause to believe they exist, a warrant shall be issued identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(B) Be directed to a person authorized and designated by the Mayor to execute it;

(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(D) Identify the item or types of property to be seized, if any; and

(E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the Court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one

person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant. (Aug. 5, 1981, D.C. Law 4-29, § 505, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-556. Chemist reports.

In a proceeding for a violation of this chapter, the official report of chain of custody and of analysis of a controlled substance performed by a chemist charged with an official duty to perform such analysis, when attested to by that chemist and by the officer having legal custody of the report and accompanied by a certificate under seal that the officer has legal custody, shall be admissible in evidence as evidence of the facts stated therein and the results of that analysis. A copy of the certificate must be furnished upon demand by the defendant or his or her attorney in accordance with the rules of the Superior Court of the District of Columbia or, if no demand is made, no later than 5 days prior to trial. In the event that the defendant or his or her attorney subpoenas the chemist for examination, the subpoena shall be without fee or cost and the examination shall be as on cross-examination. (Aug. 5, 1981, D.C. Law 4-29, § 506, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Five-day notice requirement. — The fact that the government sent the report to the wrong attorney in good faith did not relieve the government of its responsibility. Attorneys often withdraw from cases for a variety of reasons, and new attorneys are retained or appointed to replace them. It is the government's obligation to make sure that its records are kept up to date and that it serves documents on the correct attorney. There is no "good faith" exception to the 5-day notice requirement. *Johnson v. United States*, App. D.C., 596 A.2d 511 (1991).

A failure to comply with this requirement does not compel exclusion of a report if it is otherwise admissible, nor is such a failure per se reversible error. Only when the breach of the 5-day requirement results in prejudice to the defense, is a new trial required. *Johnson v. United States*, App. D.C., 596 A.2d 511 (1991).

Purpose of the "five day provision" is to give sufficient notice to the defendant to decide whether to call the chemist for cross-examination. *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

Admission into evidence. — A chemist's report may be admitted into evidence under this section, without need for a testimonial foundation, if four requirements are met: (1) The analysis of a controlled substance must be

performed by a chemist charged with an official duty to perform such analysis, (2) an official report of chain of custody and of analysis of the controlled substance must be attested to by that chemist, (3) the chemist's official report must be attested to by the officer having legal custody of the report, and (4) the official report must be accompanied by a certificate under seal that the officer has legal custody. *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

For admissibility under this section, the custodian of the report of a controlled substance does not have to be someone other than the chemist who performed the analysis and prepared the report. *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

Section 14-501 does not prevent self-authentication of chemist/custodian's report by appearing before a notary public pursuant to this section although this section does not incorporate the traditional method of proof of records reflected in § 14-501 and Super. Ct. Civ. R. 44(a)(1). *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

Failure of report to specify tests performed. — A Drug Enforcement Administration chemist's report, although failing to specify the tests performed to identify a substance, is sufficient proof that the substance was phenylcyclidine (PCP). *Shorter v. United States*, App. D.C., 506 A.2d 1133 (1986).

Business records. — This section authorizes evidentiary use of either a certified original or copy of the Drug Enforcement Agency (DEA) Form and the chemist's report including the DEA Form, can be admitted as a business record under Super. Ct. Civ. R. 43-I(a). *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

Objection to form of certificate. — This section does not imply that the failure to object to the form of the certificate before trial — before it is offered into evidence — waives objection to admission of the certificate at trial. *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

Time in which copy of certificate must be delivered. — Mailing of chemist's report one week before trial was not sufficient to comply with this section, requiring the report to be received by the defendant no later than 5 days prior to trial because defendant, in computing time, under Superior Court Criminal Rule 45 dictated the exclusion of the day of mailing and, because the period was less than 11 days, the exclusion of the intermediate Saturday and Sunday and further requires the addition of 3 days to the period because the report was served by mail. *Belton v. United States*, App. D.C., 580 A.2d 1289 (1990).

Late delivery of report. — Where there was indication or assertion that the defendant's opportunity either to assess the chemist's report or to decide whether to call the chemist for cross-examination was in any way frustrated by the government's failure to furnish him with a copy of the report 5 days before trial, the defendant suffered no prejudice and there was no ground for reversal. *Belton v. United States*, App. D.C., 580 A.2d 1289 (1990).

A chemist's report was rendered no less reli-

able by virtue of the fact that defendant received it three days before trial began, rather than the five days mandated by this section, thus, notwithstanding the government's dilatoriness in furnishing the chemist's report to defendant, the report still was "sufficiently trustworthy" and bore sufficient "indicia of reliability" to satisfy the purpose of the confrontation clause and the defendant, therefore, suffered no deprivation of his confrontation clause rights as a consequence of the trial court's decision to admit the chemist's report. *Belton v. United States*, App. D.C., 580 A.2d 1289 (1990).

Where defense counsel objected to the introduction of the chemist's reports, but did not request more time in which to decide whether to call the chemist for cross-examination, and did not request a further recess or indicate that she was unprepared to proceed, there was no prejudice as a result of the government's failure to furnish defendant with a copy of the chemist's report 5 days before trial. *Washington v. United States*, App. D.C., 600 A.2d 1079 (1991).

Pretrial motions. — There is no statute or rule obligating a defendant to file a pretrial "nonsuppression" motion to exclude a chemist's report delivered before trial under this section, although clearly there is no provision that would prevent a defendant from doing so or preclude the court from granting the motion and allowing the government to take a pretrial appeal under § 23-104(a)(1). *Giles v. District of Columbia*, App. D.C., 548 A.2d 48 (1988).

Cited in *Howard v. United States*, App. D.C., 473 A.2d 835 (1984); *Berry v. United States*, App. D.C., 528 A.2d 1209 (1987); *Helm v. United States*, App. D.C., 555 A.2d 465 (1989); *Lawrence v. United States*, App. D.C., 603 A.2d 854 (1992); *Robinson v. United States*, App. D.C., 697 A.2d 787 (1997).

§ 33-557. Mayoral subpoenas.

(a) In any investigation relating to the Mayor's functions under this subchapter with respect to controlled substances, the Mayor may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Mayor finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in the District of Columbia. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the Superior Court of the District of Columbia.

(b) A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to that person. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by

delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) In the case of contumacy by or refusal to obey a subpoena issued to any person, the Mayor may invoke the aid of any District of Columbia court within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which the subpoenaed person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Mayor to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. (Aug. 5, 1981, D.C. Law 4-29, § 507, 28 DCR 3081; May 10, 1989, D.C. Law 7-231, § 41, 36 DCR 492.)

Section references. — This section is referred to in § 33-555.

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Subchapter VI. Miscellaneous.

§ 33-561. Pending proceedings.

(a) Prosecution for any violation of the laws repealed by D.C. Law 4-29, pursuant to § 604, which were initiated prior to August 5, 1981, is not affected or abated by this chapter. If the offense being prosecuted is similar to an offense set out in subchapter IV of this chapter, then the penalties under subchapter IV of this chapter apply if they are less than those under prior law.

(b) Civil seizures or forfeitures commenced prior to August 5, 1981, are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to August 5, 1981.

(d) The Mayor shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to August 5, 1981, and who are registered or licensed by the District of Columbia on August 5, 1981, pursuant to laws and rules in effect immediately prior thereto.

(e) This chapter applies to violations of law, seizures and forfeiture, administrative proceedings, and investigations which occur following its effective date. (Aug. 5, 1981, D.C. Law 4-29, § 601, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Penalties prescribed by § 33-550 govern case involving narcotics paraphernalia

possession reversed and remanded after August 1981. — While a defendant's prosecution under § 22-3601 prior to August 5, 1981, remains unaffected by D.C. Law 4-29 (which

repealed § 22-3601, placing possession of narcotics paraphernalia under § 33-550), when defendant's case was reversed and remanded after August 1981, the case fell within the sentencing guidelines of this section so that the

court on remand should adhere to the lesser penalties in § 33-550 rather than the greater penalties under § 22-3601. *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983).

§ 33-562. Continuation of orders and rules.

Any orders and rules issued under any law affected by this chapter and in effect on August 5, 1981, and not in conflict with it, continue in effect until modified, superseded, or repealed. (Aug. 5, 1981, D.C. Law 4-29, § 602, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-563. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. (Aug. 5, 1981, D.C. Law 4-29, § 603, 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

§ 33-564. Arrests, searches and seizures without warrant.

(a) Repealed.

(b) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for a violation of subsection (a) of this section hereof by police officers, as in the case of a felony, upon probable cause that the person arrested is violating such subsection at the time of his arrest.

(c) No evidence discovered in the course of any such arrest, search, or seizure authorized by subsection (b) of this section hereof shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating the provisions of this section. (June 20, 1938, 52 Stat. 787, ch. 532, § 2; July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301(b); 1973 Ed., § 33-402; Aug. 5, 1981, D.C. Law 4-29, § 604(a)(3); Mar. 16, 1982, D.C. Law 4-77, § 3, 29 DCR 46.)

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 4-77. — Law 4-77 was introduced in Council and assigned Bill No. 4-288, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 10, 1981, and November 24, 1981, respectively. Approved without the signature of the Mayor on December 15, 1981, it was assigned Act No.

4-125 and transmitted to both Houses of Congress for its review.

Editor's notes. — Former § 33-502 was redesignated to be present § 33-564 upon enactment of D.C. Law 4-29.

Section is constitutional. — *Scott v. United States*, 395 F.2d 619 (D.C. Cir.), cert. denied, 393 U.S. 986, 89 S. Ct. 463, 21 L. Ed. 2d 447 (1968).

Defendant was not entitled to choose to

be prosecuted under section or federal narcotic statutes. *Hutcherson v. United States*, 345 F.2d 964 (D.C. Cir.), cert. denied, 382 U.S. 894, 86 S. Ct. 188, 15 L. Ed. 2d 151 (1965).

Right of privacy, to which one using a toilet stall in a public restroom may be entitled, is necessarily a limited one. *United States v. Smith*, App. D.C., 293 A.2d 856 (1972).

Right to privacy was not violated since there was no physical intrusion into the defendant's premise where the police officers, standing on the porch of an adjacent home, took pictures of marijuana plants enclosed by a stake fence approximately 6 feet in height. *United States v. McMillon*, 350 F. Supp. 593 (D.D.C. 1972).

Delay between undercover agent's purchase and seller's arrest not prejudicial. — Five and one-half month delay between undercover agent's purchase of heroin from defendant and defendant's arrest did not deny defendant a fair trial where delay was caused at first because agent hoped to make an additional larger purchase from defendant at later time and later because of an inability to identify and locate defendant. *Robinson v. United States*, App. D.C., 478 A.2d 1065 (1984).

Observations confirming parts of anonymous tip. — When officers' own observations tend to confirm parts of an anonymous tip that relate to illegal activity, the anonymous tip is boosted over the probable cause threshold, justifying an arrest. *United States v. White*, 648 F.2d 29 (D.C. Cir.), cert. denied, 454 U.S. 924, 102 S. Ct. 424, 70 L. Ed. 2d 233 (1981).

Evidence sufficient to establish probable cause. — After the police officers found ammunition and marijuana on the person of the defendant, the earlier occupancy by the defendant of a vehicle, his assault of a police officer, his flight, and his resistance to being taken into custody were sufficient to establish probable cause to search the vehicle for further related evidence, such as ammunition, guns, or drugs. *Terrell v. United States*, App. D.C., 294 A.2d 860 (1972), cert. denied, 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603 (1973).

Where the informant supplied a police officer with detailed information relating to the possession of marijuana by the defendant and every aspect of such information, including place, time, and physical appearance, was checked and verified by the police officer, the police officer had probable cause for arrest. *United States v. Malcolm*, App. D.C., 331 A.2d 329 (1975).

Where a police officer observed the defendant holding a small manila envelope in 1 hand and a small piece of white paper in the other, and the defendant appeared to be preparing to roll a cigarette, the initial request that the defendant's car pull over and stop was both reason-

able and legally justified; further, where officer smelled marijuana and noticed "un-uniform" shaped cigarette, probable cause existed for the defendant's arrest and search. *Thompson v. United States*, App. D.C., 368 A.2d 1148 (1977).

Where a reliable informant told a police officer that the defendant was at his girlfriend's residence and would be leaving within 1 hour with a quantity of heroin, the informant gave the officer a description of the defendant and his automobile, and the officer had personal knowledge of the defendant's prior convictions and reputation as a narcotics offender, the officer had probable cause to arrest the defendant when he observed him leaving the girlfriend's apartment within 1 hour and enter the automobile described by the informant. *United States v. Myers*, 538 F.2d 424 (D.C. Cir. 1976), cert. denied, 430 U.S. 908, 97 S. Ct. 1179, 51 L. Ed. 2d 584 (1977).

A police officer who, while walking his beat in an area considered high in narcotic traffic, noticed the defendant and 2 other young men standing in the shadows of a building, observed that their hands were "passing and changing" among them, and crossed the street to investigate whereupon the defendant began to walk away rapidly had probable cause to arrest the defendant for disorderly conduct; thus, the ensuing search for weapons incident to the arrest, which search yielded a bag of heroin, was likewise lawful. *Von Sleichter v. United States*, 472 F.2d 1244 (D.C. Cir.), cert. denied, 409 U.S. 1063, 93 S. Ct. 555, 34 L. Ed. 2d 517 (1972).

Since there was probable cause for an arrest without a warrant prior to the search of the defendant, who was suspected of robbing a liquor store, seizure of heroin disclosed by the search was valid. *Harrison v. United States*, App. D.C., 267 A.2d 368 (1970).

An anonymous tip about an ongoing transaction, detailed as to time and place, including a specific description of 1 of the participants and their vehicles as well as their modus operandi, and verified by the officers through surveillance in all details except for the actual possession or exchange of narcotics, provides a sufficient basis for a legitimate investigatory stop to question the occupants as to their identity and visually check inside the car. *United States v. White*, 648 F.2d 29 (D.C. Cir.), cert. denied, 454 U.S. 924, 102 S. Ct. 424, 70 L. Ed. 2d 233 (1981).

Subsection (b) applies in narrow situation in which a drug offense cannot for probable cause purposes be regarded as anything but a misdemeanor and the arresting officer has not personally observed the allegedly criminal behavior but acts on a reliable tip. *United States v. Hamilton*, App. D.C., 390 A.2d 449 (1978).

Subsection (b) does not preempt or detract from any other authority to arrest in

drug cases but instead plugs what Congress considered a loophole in the law — that a police officer could not effect an arrest on misdemeanor drug charges unless he had personally observed commission of the offense. *United States v. Hamilton*, App. D.C., 390 A.2d 449 (1978).

Lack of probable cause. — An officer's observations of a defendant, who was standing beside a sink in his employer's restroom and who appeared startled upon seeing the policeman, who had entered in order to use the restroom and who saw a coin purse located on the sink similar to those in which the officer had found narcotics in the past, did not constitute probable cause for the officer, who admitted that he had no reason to believe a crime was being committed when he looked into the coin purse, to arrest the defendant prior to the search. *McWilliams v. United States*, App. D.C., 298 A.2d 38 (1976).

An officer who observed the defendant, a high school student, outside of a school building, trying to stuff some money into an envelope similar to those used in other narcotics transactions at the school and who saw a known narcotics addict approach the defendant, who started to run when officer reached for the envelope and tore a portion of the envelope from the defendant's hand, did not have probable cause to arrest the defendant at the moment the envelope was seized, and the heroin found in the envelope should have been suppressed. *Waters v. United States*, App. D.C., 311 A.2d 835 (1973).

Where the officers, who had no complaint or report of a crime in the area, had never seen the defendant before and did not observe him engaged in any unlawful conduct, detained the defendant for a period of time and then asked him to accompany them to an apartment building where he had previously been, but did not tell the defendant that he was free to ignore their request, the search of a leather pouch that hung from the defendant's belt which contained narcotics was invalid and the narcotics recovered should have been suppressed. *Robinson v. United States*, App. D.C., 278 A.2d 458 (1971).

Police do not have probable cause under subsection (b) to search a manila envelope, of the sort commonly used to package marijuana for street sale, or the passenger seat of an automobile where no other indicia of narcotics possession are present. *United States v. Wright*, 113 WLR 729 (Super. Ct. 1985).

Affidavit held sufficient. — Where an affidavit stated that a police informant had purchased on several occasions from the defendant on the defendant's premises a substance that later proved to be hashish, a Magistrate could reasonably infer that the alleged transfers were not made in pursuance of proper order forms, and the affidavit supporting the government's

application for a search warrant is not insufficient for failure to allege that the informant-purchaser lacked written order forms required of a transferee of marijuana. *Rutledge v. United States*, App. D.C., 283 A.2d 213 (1971).

Warrantless search. — Where there was no circumstances indicating any compelling need for a split-second action by the police officers, nor any suggestion that the defendants were armed, and there was no information available regarding the veracity of an informant, nor any evidence indicating how the informant obtained her information or on what grounds she concluded that the defendants were selling narcotics, and the informant's tip did not describe the criminal activity in sufficient detail to remedy this defect, the police did not act reasonably in conducting a warrantless search of the defendants in reliance upon the informant's tip concerning the illegal sale of narcotics. *Rushing v. United States*, App. D.C., 381 A.2d 252 (1977).

Evidence disclosing that a detective was informed by a reliable person as to the place where a large quantity of narcotics were stored but he was unable to obtain a search warrant because he could find no one available to issue it and went to the building and knocked on the door, which was then forced open, was insufficient to show exceptional circumstances authorizing a search without a warrant. *Townsley v. United States*, App. D.C., 215 A.2d 482 (1965).

Where the police officer received reliable information in the early morning hours that a large supply of heroin was to be transported in a few hours to a different location for processing, and no Magistrate was available so that officers were warranted in effecting the entry without search warrant, and upon forcing entry found the apartment empty, the significant possibility of removal of the contraband was an exceptional circumstance justifying the search for the narcotics, and thus narcotics seized were properly admitted in a prosecution for the violation of this section. *Hailes v. United States*, App. D.C., 267 A.2d 363 (1970).

Where police officers observed defendant sitting in the front seat of a car which was parked illegally in an alley located in a neighborhood known for high narcotics activity, observed defendant bend forward in the passenger seat and immediately come back up as the officers approached in a marked police cruiser, and observed a folded manila "coin" envelope on the floor of the car, the officers had probable cause to believe that the manila envelope contained contraband and thus were permitted under the Fourth Amendment to enter the car and seize the article. *Price v. United States*, App. D.C., 429 A.2d 514 (1981).

Plain view doctrine. — The fact that police officers, who used an adjacent porch with that owner's permission to see into the defendant's

yard surrounded by a stake fence approximately 6 feet in height had to stand on their toes, or lean around the side of a partition, or stand on a box, did not preclude their observations from being within scope of "plain view" doctrine. *United States v. McMillon*, 350 F. Supp. 593 (D.D.C. 1972).

Police who came to the defendant's house with an arrest warrant for the defendant's brother, who was charged with a violent crime, were not required to accept as true the defendant's statement that his brother was not home and were entitled to search the home for the suspect and to seize the marijuana which was in plain view within the home. *Hawkins v. United States*, App. D.C., 319 A.2d 328, cert. denied, 419 U.S. 969, 95 S. Ct. 233, 42 L. Ed. 2d 185 (1974).

Even if the detention for failure to display an operator's permit constituted an arrest and such arrest was a subterfuge to allow police officers to search the automobile and its occupants, seizure of the narcotics was not invalid since the narcotics were observed in plain view by the officer when the defendant occupant unsuccessfully attempted to conceal the narcotics. *Wise v. United States*, App. D.C., 277 A.2d 476 (1971).

Where a police officer approached an automobile stopped in the left lane of the road on the driver's side to inform the driver that she could not make a left turn, observed the driver smoking a colored cigarette, smelled a strange odor of cigarette, observed furtive motions, ordered the occupants from the automobile, and looked in the automobile to assure that no weapons were present, a vial of marijuana in plain view on the floor of the automobile was admissible. *United States v. Burton*, App. D.C., 327 A.2d 308 (1974).

Search and seizure deemed reasonable.

— Where a police officer who had heard a radio broadcast stating that 3 subjects were using narcotics in an automobile parked at the rear of a warehouse went to the location and saw 3 persons seated in an automobile matching the description which had been broadcast, the officer had justification for further affirmative action and his determination to identify himself as a police officer and open the car's door simultaneously, while directing the occupants to get out, was permissible, and upon observing a bottle-top cooker and a full syringe on the floor of the car, the seizure of the evidence and the arrest of the subjects became appropriate and there was no violation of the defendant's constitutional right to be protected against unreasonable search and seizure. *United States v. Mitchell*, App. D.C., 299 A.2d 540 (1973).

A police officer's reasonable suspicions, resulting from a radio call advising that the occupants of a white automobile at the intersection bearing a specific license plate number

were using narcotics and carrying a gun, which were corroborated by matching details of a white automobile at the intersection bearing the same license plate number, matured into probable cause to arrest when the officer saw a vial on the car's floor that he believed to contain narcotics and the narcotics found in the ensuing search of the automobile are admissible. *Green v. United States*, App. D.C., 275 A.2d 555 (1971).

Where a police officer, acting upon an anonymous tip, saw what appeared to be a major narcotics-packaging operation in progress in the basement of a house and where the police properly made a warrantless entry of the premises, the police were justified in searching premises for narcotics and narcotics paraphernalia; the contraband found was thus admissible, particularly in view of the fact that the contraband was found in the immediate vicinity of the arrests of those present and in the close environs of the point where the contraband had first been seen. *United States v. Johnson*, 561 F.2d 832 (D.C. Cir.), cert. denied, 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080 (1977).

Where a concededly reliable informer gave a tip based on personal knowledge which described the defendant in great detail, and gave the defendant's alias and his present location and before the arrest the officers were able to corroborate the informant's tip in every detail with the exception of the actual possession of the narcotics, probable cause was established and the narcotic and implement seized from the defendant at the time of the arrest did not need to be suppressed. *Banks v. United States*, App. D.C., 305 A.2d 256 (1973).

Where an officer, squeezing a paper bag to determine if it contained a weapon, felt that it contained a soft, loosely packed material which was likely to have been marijuana, and where the officer had previously observed the defendant attempt to push the bag away from himself, the officer had probable cause to believe that the defendant had contraband narcotics in his possession, and thus to open the bag. *Johnson v. United States*, App. D.C., 367 A.2d 1316 (1977).

Where the police acted upon the information received from an informant, whose reliability had been established by prior contacts with the police, and since the information furnished by him proved accurate, describing in detail the activities of the defendant, his physical description, his present location, and that narcotics were contained in a cigarette package in his possession, the information supplied by the informant was sufficient to establish probable cause to apprehend the defendant and seize the contraband heroin and the fact that the defendant was not formally placed under arrest until the contraband heroin was seized from his

pocket is not material. *Smith v. United States*, App. D.C., 348 A.2d 891 (1975).

Where, from previous observations, the police had probable cause to believe that extensive gambling was being carried on, they had sufficient grounds to search the individuals present in the club or bar and a tinfoil packet found on an occupant was properly seized and would be admissible in a prosecution for possession of heroin. *United States v. Miller*, App. D.C., 298 A.2d 34 (1972).

Statutory duty of police to arrest. — When police detectives saw the narcotics paraphernalia in the possession of defendants, the officers were under a statutory duty to arrest the offenders immediately. *Keith v. United States*, App. D.C., 232 A.2d 92 (1967).

Action did not constitute arrest. — The action of 1 police officer, in remaining behind an open passenger door of the police car with a pistol drawn for the purpose of "covering" his partner, as the other officer approached the driver's side of a parked automobile that matched the description of the automobile reported to be occupied by gun-carrying narcotics users, did not constitute an arrest. *Green v. United States*, App. D.C., 275 A.2d 555 (1971).

Narrow applicability of subsection (c). — The evidentiary limitation of subsection (c) comes into play only when an arrest is effected under subsection (b). *United States v. Hamilton*, App. D.C., 390 A.2d 449 (1978).

Search incident to arrest. — Following the arrest of the defendant under a warrant for operating a motor vehicle after the revocation of an operator's permit, the police officer was authorized to conduct a "full field search" of the defendant, remove the envelope from a pocket inside the coat, and open it to determine if it contained narcotics. *United States v. Simmons*, App. D.C., 302 A.2d 728 (1973).

Where a defendant, while driving an automobile, was recognized by a police officer who knew that the defendant was a narcotics violator and that he did not possess a valid driver's license, and where the officer waved the defendant to the curb and asked to see his license, whereupon the defendant admitted that he was unlicensed, the officer's arrest of the defendant is not a sham, and the heroin seized during the search incident to the arrest is not subject to suppression. *Lyles v. United States*, App. D.C., 271 A.2d 793 (1970).

Routine inventory search, which was made of a pickup truck containing valuable tools and equipment after the lawful impoundment of truck subsequent to an arrest of the occupants and during which the police discovered a syringe, bag of white powder, folded dollar bill containing white powder, and a burned bottle cap with traces of heroin and quinine, was a valid search; evidence obtained during the search is admissible in a criminal

proceeding. *Lewis v. United States*, App. D.C., 379 A.2d 1168 (1977), *aff'd*, App. D.C., 486 A.2d 729 (1985).

Where person who gave consent to search apartment was lawful cotenant who had the right to be present in at least the jointly shared areas of the apartment, the defendant, by sharing his apartment, ran the risk that the cotenant would consent to a search of the common areas of that abode and the marijuana found in the apartment was admissible. *Villine v. United States*, App. D.C., 297 A.2d 785 (1972).

Consent of hotel manager invalid for warrantless search. — Where a hotel registration slip showed that the occupant of the room was being charged for 2 days, and the hotel had not removed occupant's belongings at the time the search was made which was after normal check-out time, possession of room had not reverted to the hotel and was still vested in the registered occupant and a hotel manager could not validly consent to warrantless search of room. *United States v. Costa*, 356 F. Supp. 606 (D.D.C.), *aff'd*, 479 F.2d 921 (D.C. Cir. 1973).

Government has qualified privilege to withhold location of secret surveillance post. *Hicks v. United States*, App. D.C., 431 A.2d 18 (1981).

In determining whether a defendant is entitled to disclosure of the location of a secret government surveillance post, when the question before the court is probable cause for his arrest and search, the court should consider, among other pertinent concerns, whether the defense has established that the location of the surveillance post is a material and relevant issue; whether the evidence supports a finding of probable cause; and whether the evidence creates a substantial doubt about the credibility of the observer. *Hicks v. United States*, App. D.C., 431 A.2d 18 (1981).

Admissibility of evidence seized. — Even if arrest of defendant without warrant was invalid, capsules, which the police officers recovered from a trash pile in the corner of a fire-gutted pool hall after the defendant and another person had been permitted by the officers to leave the room, were not seized in violation of the defendant's Fourth Amendment rights and were admissible in a prosecution for the unlawful possession of narcotics. *United States v. Hayes*, App. D.C., 271 A.2d 701 (1970).

Where the defendant was a frequenter of an establishment where intoxicating liquor was being illegally sold and by doing so was guilty of a misdemeanor being committed in presence of the officers, the officers were within their proper duty in arresting the defendant without a warrant, and as an incident of the arrest, search of the defendant was lawful, and the narcotics seized were properly admitted into

evidence against him in a prosecution for narcotics violations. *Smith v. United States*, 353 F.2d 877 (D.C. Cir. 1965).

The defendant's conviction of possessing an usable quantity of marijuana is supported by evidence that the defendant was found by a police officer to be smoking a pipe in which later tests detected marijuana resin. *Richardson v. United States*, App. D.C., 366 A.2d 433 (1976).

Custodial interrogation. — Where the defendant asked to accompany the officers to a bedroom, and there he was confronted with narcotics and paraphernalia and asked if he recognized the items and if they were his, there was no custodial interrogation, and the inculpatory statements made by the defendant were admissible. *Tyler v. United States*, App. D.C., 298 A.2d 224 (1972).

Questions addressed to 3 defendants by the arresting officers seeking an explanation for the defendants' being in a condemned house were noncoercive and not "custodial interrogation." *Keith v. United States*, App. D.C., 232 A.2d 92 (1967).

Deprivation of fair hearing. — Where the trial court granted a motion to suppress narcotics seized in the course of an on-the-street encounter before all the evidence had been presented, and the testimony of a police officer, who approached the passenger side of the automobile where the defendant was sitting was not taken, and during the cross-examination of the officer who did testify the court interrupted with comments and leading questions, the government was deprived of fair hearing. *United States v. Crickenberger*, App. D.C., 275 A.2d 232 (1971).

Scope of cross-examination. — Where the gist of the defense in a prosecution for the possession of narcotic drugs was that, although a passenger in the automobile, the defendant did not have seized narcotics in his possession and was not guilty of the offense charged but that it was due to a mistake by the arresting officers at the scene that he was charged with the offense and the police sergeant was the only government witness who testified that he saw the defendant drop a package to the ground and his credibility on that point was crucial, the defendant was entitled to cross-examination for the purpose of establishing prior inconsistent statements by the witness and should have been permitted an opportunity to make proffer, and it was prejudicial error to deny the defendant such cross-examination. *Holmes v. United States*, App. D.C., 277 A.2d 93 (1971).

Expert's testimony admissible despite lack of specific recall. — Where an expert witness's tests for heroin had been performed a year before trial and he did not specifically recall making them but was able to testify from his records as to their results, his lack of specific recall was not as critical as it might

have been had his findings been based on subjective observation rather than on standard objective tests, so that at most his credibility with the jury was affected, but his testimony was admissible. *Lee v. United States*, App. D.C., 383 A.2d 360 (1978).

Retrial not barred by double jeopardy. — Where the trial court was informed, when the defendant failed to appear for the trial, that the defendant was in jail, was suffering from heroin withdrawal symptoms, and was quite ill and that the defendant might be unable to attend the trial for several days, a grant of mistrial was not unreasonable, and a retrial was not barred by the double jeopardy clause. *Glover v. United States*, App. D.C., 301 A.2d 219 (1973).

Harmless error. — In light of the fact that at no stage of a criminal proceeding prior to the rehearing en banc had the defendant claimed that any legal injury was inflicted upon him by the police officer's action in looking through a basement window after the police had received an anonymous tip that narcotics operation could be seen through such window, the admission of testimony of the police officer concerning what he saw through the window did not constitute error affecting the substantial rights requiring the reversal of conviction of possession of narcotics, even though the police officer had stepped off the walkway a few feet onto private property in order to look through such basement window. *United States v. Johnson*, 561 F.2d 832 (D.C. Cir.), cert. denied, 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080 (1977).

Reversible error. — Reversible error occurred when defendant was sentenced in absence of trial counsel. *Hockaday v. United States*, App. D.C., 359 A.2d 146 (1976).

Cited in *Purvis v. United States*, App. D.C., 270 A.2d 501 (1970); *Sims v. United States*, App. D.C., 276 A.2d 434 (1971); *United States v. Bynum*, App. D.C., 283 A.2d 649 (1971); *Kinard v. United States*, App. D.C., 288 A.2d 233 (1972); *Payne v. United States*, App. D.C., 294 A.2d 501 (1972); *Mack v. United States*, App. D.C., 310 A.2d 234 (1973); *United States v. Walton*, 514 F.2d 201 (D.C. Cir. 1975); *Perry v. United States*, App. D.C., 364 A.2d 617 (1976); *United States v. Hall*, 571 F.2d 649 (D.C. Cir. 1977), cert. denied, 435 U.S. 926, 98 S. Ct. 1492, 55 L. Ed. 2d 520 (1978); *Vaughn v. United States*, App. D.C., 367 A.2d 1291 (1977); *United States v. Foster*, 584 F.2d 997 (D.C. Cir.), cert. denied, 439 U.S. 1006, 99 S. Ct. 620, 58 L. Ed. 2d 682 (1978); *United States v. Hawkins*, 595 F.2d 751 (D.C. Cir. 1978), cert. denied, 441 U.S. 910, 99 S. Ct. 2005, 60 L. Ed. 2d 380 (1979); *United States v. Dixon*, 446 F. Supp. 58 (D.D.C. 1978); *Jones v. United States*, App. D.C., 391 A.2d 1188 (1978); *Schwasta v. United States*, App. D.C., 392 A.2d 1071 (1978); *United States v. Wright*, 610 F.2d 930 (D.C. Cir. 1979); *United*

States v. Crawford, 613 F.2d 1045 (D.C. Cir. 1979); *United States v. Davis*, 617 F.2d 677 (D.C. Cir. 1979); *United States v. Dowe*, 478 F. Supp. 1058 (D.D.C. 1979); *Duddles v. United States*, App. D.C., 399 A.2d 59 (1979); *Logan v. United States*, App. D.C., 402 A.2d 822 (1979); *Burgos v. United States*, App. D.C., 404 A.2d 532 (1979); *Smith v. United States*, App. D.C., 406 A.2d 1262 (1979); *Stover v. United States*, App. D.C., 410 A.2d 188 (1979); *United States v. Whitfield*, 629 F.2d 136 (D.C. Cir. 1980), cert. denied, 449 U.S. 1086, 101 S. Ct. 875, 66 L. Ed. 2d 812 (1981); *United States v. Pardo*, 636 F.2d 535 (D.C. Cir. 1980); *Jordan v. United States*, App. D.C., 414 A.2d 873 (1980); *Jones v. Jackson*, App. D.C., 416 A.2d 249 (1980); *Wilson v. United States*, App. D.C., 419 A.2d 353 (1980); *Williams v. United States*, App. D.C., 427 A.2d 901 (1980), cert. denied, 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241 (1981); *Winestock v. United States*, App. D.C., 429 A.2d 519 (1981); *United States v. Hubbard*, App. D.C., 429 A.2d

1334, cert. denied, 454 U.S. 857, 102 S. Ct. 308, 70 L. Ed. 2d 153 (1981); *Harris v. United States*, App. D.C., 430 A.2d 536 (1981); *McEachin v. United States*, App. D.C., 432 A.2d 1212 (1981); *United States v. Allen*, App. D.C., 436 A.2d 1303 (1981); *Stewart v. United States*, App. D.C., 439 A.2d 461 (1981); *Holley v. United States*, App. D.C., 442 A.2d 106 (1981); *United States v. Anderson*, 670 F.2d 328 (D.C. Cir. 1982); *United States v. Raper*, 676 F.2d 841 (D.C. Cir. 1982); *United States v. Harrison*, 679 F.2d 942 (D.C. Cir. 1982); *United States v. Lawson*, 682 F.2d 1012 (D.C. Cir. 1982); *United States v. Taylor*, 689 F.2d 1107 (D.C. Cir. 1982); *Hack v. United States*, App. D.C., 445 A.2d 634 (1982); *Tolson v. United States*, App. D.C., 448 A.2d 248 (1982); *United States v. McCarthy*, App. D.C., 448 A.2d 267 (1982); *Coleman v. United States*, App. D.C., 449 A.2d 327 (1982); *Allison v. United States*, App. D.C., 451 A.2d 877 (1982); *Beach v. United States*, App. D.C., 466 A.2d 862 (1983).

§ 33-565. Search warrants; issuance, execution and return; property inventory; filing of proceedings; interference with service.

(a) A search warrant may be issued by any judge of the Superior Court of the District of Columbia or by a United States Magistrate for the District of Columbia when any controlled substances are manufactured, possessed, controlled, sold, prescribed, administered, dispensed, or compounded, in violation of the provisions of the District of Columbia Uniform Controlled Substances Act of 1981, and any such controlled substances and any other property designed for use in connection with such unlawful manufacturing, possession, controlling, selling, prescribing, administering, dispensing, or compounding may be seized thereunder, and shall be subject to such disposition as the Court may make thereof and such controlled substances may be taken on the warrant from any house or other place in which they are concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or Magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or Magistrate is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, to the Chief of Police of the District of Columbia or any member of the Metropolitan Police Department or to the Chief or any member of the United States Park Police, stating the particular grounds or probable cause for its issue and the names of

the persons whose affidavits have been taken in support thereof, and commanding the Chief of Police or member of the Metropolitan Police Department or to the Chief or any member of the United States Park Police forthwith to search the place named for the property specified and to bring it before the judge or Magistrate.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or Magistrate shall insert a direction in the warrant that it may be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or Magistrate who issued it within 10 days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or Magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or Magistrate at the time, to the following in effect: "I, _____, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or Magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or Magistrate must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the Clerk of the Superior Court of the District of Columbia.

(n) Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than 2 years. (June 20, 1938, 52 Stat. 792, ch. 532, § 14; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301(k); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 33-414; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(4), 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(d), 28 DCR 4348; Aug. 2, 1983, D.C. Law 5-24, § 14,

30 DCR 3341; May 10, 1989, D.C. Law 7-231, § 42(b), 36 DCR 492; June 13, 1990, D.C. Law 8-138, § 4, 37 DCR 2638; Mar. 7, 1991, D.C. Law 8-227, § 3, 38 DCR 224.)

Cross references. — As to search warrants, see §§ 23-521 to 23-525.

As to property subject to forfeiture under Drug Paraphernalia Act of 1982, see § 33-604.

Legislative history of Law 4-29. — See note to § 33-501.

Legislative history of Law 4-52. — See note to § 33-541.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-231. — See note to § 33-557.

Legislative history of Law 8-138. — See note to § 33-543a.

Legislative history of Law 8-227. — Law 8-227 was introduced in Council and assigned Bill No. 8-480, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-310 and transmitted to both Houses of Congress for its review.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States Commissioner and established in place thereof the office of United States Magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States Magistrates assumed the office pursuant to appointment by order of the District Court, dated June 20, 1969.

“The District of Columbia Uniform Controlled Substances Act of 1981,” referred to near the middle of subsection (a), is D.C. Law 4-29.

Mayor to implement public information program. — See note to § 33-501.

Editor’s notes. — Former § 33-514 was redesignated to be present § 33-565 upon enactment of D.C. Law 4-29.

Office of Major and Superintendent of Metropolitan Police abolished. — The Office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police. The Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated “Deputy Chief of Police, Executive Officer”; the Assistant Superintendent of the Metropolitan Police in com-

mand of the Detective Bureau was designated “Deputy Chief of Police, Chief of Detectives”; and each other Assistant Superintendent of the Metropolitan Police was designated “Deputy Chief of Police” by Reorganization Order No. 7, dated September 16, 1952. Reorganization Order No. 7 was replaced by Organization Order No. 153, dated November 10, 1966.

Purpose of section. — This section codifies the common law rule that police may not forcibly enter a person’s house without prior announcement; this section serves the important purposes of protecting the individual’s right of privacy in his or her home, and of protecting police officers against unwarranted danger and encouraging police safety. *Belton v. United States*, App. D.C., 647 A.2d 66 (1994), cert. denied, 514 U.S. 1028, 115 S. Ct. 1383, 131 L. Ed. 2d 236 (1995).

Reasonableness of officer’s actions. — The test in determining whether officers were acting reasonably in an exigent situation is how a reasonable and experienced officer would respond under these circumstances. *Culp v. United States*, App. D.C., 624 A.2d 460 (1993).

Search warrant and execution during nighttime hours is proper in narcotics case where there is probable cause both as to its existence for its service at such time, and where it is accompanied by a supporting affidavit as well as by an insertion within the warrant as to when it could be served. *United States v. Green*, 331 F. Supp. 44 (D.D.C. 1971).

Knock and announce requirements for entry. — Absent exigent circumstances, police must comply with the knock and announce requirements of subsection (g) before they can enter an open door of a residence to execute a search warrant for narcotics, unless an occupant gives prior permission to enter. *United States v. Goodard*, 113 WLR 537 (Super. Ct. 1985).

The potential destruction of drugs does not, by itself, constitute exigent circumstances which would permit forcible entry under subsection (g). *United States v. McKoy*, 113 WLR 33 (Super. Ct. 1985).

A 5 to 7-second interval during which there was no indication that officers were being refused admission, did not comply with the knock and announce provisions of this section. *United States v. Cooper*, 117 WLR 2497 (Super. Ct. 1989).

It is well established that the police may not forcibly enter a person’s house without prior announcement. *Culp v. United States*, App. D.C., 624 A.2d 460 (1993).

Federal statutory provisions. — The knock and announce provision in subsection (g) is virtually identical to its federal counterpart, 18 U.S.C. § 3109. *Culp v. United States*, App. D.C., 624 A.2d 460 (1993).

Exceptions to knock and announce rule. — There are 2 broad exceptions to the knock and announce requirement. The first exception allows police to enter without delay if the police can reasonably infer from the actions or inactions of the occupants that they have been refused admittance. The second exception allows police to enter if they are confronted with exigent circumstances, such as the imminent destruction of evidence or danger to the entering officer. *Culp v. United States*, App. D.C., 624 A.2d 460 (1993).

Exigent circumstances warranted exception to knock and announce requirements. — Suspicion of drugs, guns and an armed guard, and the occupants' prior notice of the arrival of the police, were sufficient to come within the exception to the statutory knock and announce requirements. *Williams v. United States*, App. D.C., 576 A.2d 700 (1990).

Exigent circumstances warranted exception to knock and announce requirement, where the police were executing a warrant that had grown out of an investigation for at least 12 armed robberies in which the perpetrator used a weapon described as an Uzi type machine gun, and where defendant had been linked to all of those robberies by identification evidence of one kind or another; where the information that the appellant was using drugs increased police concern about executing the warrant; where there was danger to citizens and law enforcement personnel reasonably posed by appellant in those premises and the weapons accessible to him; where, if appellant believed the police were there for him, he might act in a desperate way to avoid apprehension and use the weapon that was at his disposal or the weapon police believed was at his disposal; and where the weapon was an automatic or semiautomatic machine gun type weapon which was capable of inflicting tremendous damage in a very short period of time before the officers could adequately defend themselves. *Culp v. United States*, App. D.C., 624 A.2d 460 (1993).

Nighttime searches. — Once a judge has determined that probable cause exists to search for drugs in the District of Columbia, the inadvertent omission of language in the search warrant authorizing nighttime searches does not render the nighttime search invalid. *Hines v. United States*, App. D.C., 442 A.2d 146 (1982).

Section controls over general search warrant provisions. — The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia

Codes. *United States v. Thomas*, App. D.C., 294 A.2d 164, cert. denied, 409 U.S. 992, 93 S. Ct. 341, 34 L. Ed. 2d 258 (1972).

United States Park Police. — Under subsection (e), the United States Park Police lack statutory authority to be issued search warrants. *United States v. Edelen*, App. D.C., 529 A.2d 774 (1987).

No violation of subsection (f) found where officer named in warrant temporarily absent from scene. — Although the officer mentioned in the search warrant was not present when other officers began their search, where that officer did arrive on the scene sometime thereafter, the court found no violation of subsection (f) of this section had occurred. *United States v. Bright*, 563 F. Supp. 354 (D.D.C. 1982), aff'd sub nom. *United States v. Moore*, 732 F.2d 983 (D.C. Cir. 1984).

Forcible entry. — This section has been construed to allow the police to enter forcibly when they can reasonably infer from the actions or inactions of the occupants that they have been constructively refused admittance or are confronted with exigent circumstances, such as the imminent destruction of evidence, or some danger to the entering officers. *Belton v. United States*, App. D.C., 647 A.2d 66 (1994), cert. denied, 514 U.S. 1028, 115 S. Ct. 1383, 131 L. Ed. 2d 236 (1995).

Actions not constituting "breaking." — An entry through an open door by a police officer with a search warrant, after the occupant is made aware of the officer's presence and purpose, is not a "breaking" within the meaning of the knock and announce statute. *Belton v. United States*, App. D.C., 647 A.2d 66 (1994), cert. denied, 514 U.S. 1028, 115 S. Ct. 1383, 131 L. Ed. 2d 236 (1995).

"Refused admittance." — Whether police officers had been "refused admittance" to an apartment within the meaning of subsection (g) when they broke down the door with a battering ram was a "mixed" question of law and fact. *Griffin v. United States*, App. D.C., 618 A.2d 114 (1992).

Special circumstances supporting a reasonable belief on the part of the police that the occupants' nonresponse to knocking and an announcement is deliberate will justify a forced entry almost immediately after their detection; however, in the absence of such circumstances, a significant time lapse is required to justify a conclusion that admittance was refused. *Griffin v. United States*, App. D.C., 618 A.2d 114 (1992).

Subsection (h) qualifies §§ 23-521 to 23-523 permitting a nighttime execution of the search warrant if, and only if, there is an express authorization therefor pursuant to statute; the latter sections are applicable to nonnarcotic cases only. *United States v. Green*, 331 F. Supp. 44 (D.D.C. 1971).

Requirement that search warrant command search "forthwith," set forth in subsection (e) of this section, is to insure that probable cause existing when warrant issued also exists when it is executed. *Curtis v. United States*, App. D.C., 263 A.2d 653 (1970).

Delay in execution invalidates search only if defendant prejudiced. — Even an unreasonable time lag in the execution of a search warrant must prejudice defendant to render search invalid. *Curtis v. United States*, App. D.C., 263 A.2d 653 (1970).

Delay in execution within 10-day period. — Under the provisions of subsections (e) and (i) of this section, that the warrant command the search "forthwith" and that the warrant must be executed within 10 days after its date, delay within 10-day limitation does not, standing alone, vitiate warrant. *Johnson v. United States*, App. D.C., 255 A.2d 494 (1969).

Description of premises. — A warrant ordering the search of "Entire Premises, 2nd Floor Front" at specified address described the place to be searched with sufficient particularity to be valid, though the 2nd floor of the premises was divided into 2 apartments, each fronting on the street, where the affidavit, referring to a specific apartment number, was attached to the warrant and sufficiently referred to therein to enable officer executing warrant to look at affidavit and determine place intended. *United States v. Moore*, App. D.C., 263 A.2d 652 (1970), *aff'd*, 461 F.2d 1236 (D.C. Cir. 1972).

Evidence sufficient to support issuance of warrant. — Where an experienced narcotic officer received information from an informant whom he knew to be a narcotics user that the defendant and another person had a large quantity of narcotics at a certain address to which the defendant would drive in a certain type of automobile, and the officer went to the location and noticed the automobile and the defendant, whom he recognized as one involved in narcotics traffic, and saw him enter the premises described, there was probable cause for issuance of a search warrant. *Brandon v. United States*, 270 F.2d 311 (D.C. Cir. 1959), *cert. denied*, 362 U.S. 943, 80 S. Ct. 808, 4 L. Ed. 2d 771 (1960).

Where United States narcotics agents had the residence of the defendant under surveillance for some time prior to a certain date, and on that date narcotics agents and detectives observed known drug addicts and peddlers entering and leaving the defendant's residence, and at 9 p.m. on that date a drug peddler, shortly after leaving the defendant's residence, was arrested and found to have heroin in his possession, and he admitted purchasing the heroin at the defendant's residence, a search warrant was properly issued for a search of the defendant's residence. *Ward v. United States*,

281 F.2d 917 (D.C. Cir. 1960), *cert. denied*, 365 U.S. 837, 81 S. Ct. 751, 5 L. Ed. 2d 746 (1961).

An affidavit for a search warrant reciting that previously reliable sources had informed the affiant that the defendant and others were selling narcotics out of a certain apartment, that the affiant had personally observed a narcotics purchase taking place in building in question and that the suspects had been involved with narcotics in the past was sufficient to authorize issuance of a search warrant. *Siler v. United States*, App. D.C., 215 A.2d 478 (1965).

Where officers searched an informant and found him to be without money or drugs, supplied him with money, watched him enter the premises of the defendant and leave the premises, and then searched the informant and found that money had been spent and that drugs had been obtained, there was probable cause for issuance of a search warrant. *United States v. McKethan*, 247 F. Supp. 324 (D.D.C. 1965).

An affidavit reciting that a confidential informant whose reliability had been proven told narcotics agents that the defendant was selling heroin in his apartment, that the agents furnished him with funds to purchase narcotics, and that the informant was observed entering the apartment building and then emerging, and that he surrendered to the agents a narcotic substance purchased from the defendant disclosed probable cause for issuance of the warrant. *Jones v. United States*, 353 F.2d 908 (D.C. Cir. 1965).

Failure of Magistrate to take affidavit or deposition in writing of informant was not fatal, where evidence before the Magistrate from trained narcotics agents, who had personally observed known drug addicts and drug peddlers entering and leaving residence of defendant, and who had received information from reliable sources, was ample to support the search warrant, without reference to oral statements of informant. *Ward v. United States*, 281 F.2d 917 (D.C. Cir. 1960), *cert. denied*, 365 U.S. 837, 81 S. Ct. 751, 5 L. Ed. 2d 746 (1961).

Search warrant was properly executed, though police allegedly tricked defendant by allowing defendant to think that only janitor was at door of apartment, where door was opened 3 or 4 inches by defendant, and one of the officers thrust his badge and search warrant through aperture and stated that he had a search warrant, and when defendant started to run, the officer pulled the door open, and the night chain slipped off, and that officer then entered and placed defendant under arrest. *Jones v. United States*, 304 F.2d 381 (D.C. Cir.), *cert. denied*, 371 U.S. 852, 83 S. Ct. 73, 9 L. Ed. 2d 88 (1962).

Warrant authorizing search for alcoholic beverages. — Where, in searching the

defendant's premises under a valid search warrant authorizing search for alcoholic beverages or any property designed for use in connection with violation of Alcoholic Beverage Control Act, a police officer discovered two large paper bags, and although the feel and weight of such bags indicated to him that they did not contain bottles, the officer looked into the bags and discovered therein a quantity of marijuana, the officer's action in looking into the bags did not constitute an unreasonable search, but was lawful. *United States v. White*, 122 F. Supp. 664 (D.D.C. 1954).

Standard of review. — Appellate review of a challenge to the trial court's determination that exigent circumstances justified police intrusion must afford the government all legitimate inferences from the testimony and uncontroverted facts of record, if those inferences are supportable under any reasonable view of the evidence. *Culp v. United States*, App. D.C., 624 A.2d 460 (1993).

Cited in *O'Neal v. United States*, App. D.C., 105 A.2d 739 (1954), *aff'd*, 222 F.2d 411 (D.C. Cir. 1955); *Fisher v. United States*, App. D.C., 183 A.2d 553 (1962).

§ 33-566. Physician privilege.

Information communicated to a physician in an effort unlawfully to procure controlled substances, or unlawfully to procure the administration of any such controlled substances, shall not be deemed a privileged communication. (June 20, 1938, 52 Stat. 795, ch. 532, § 20; 1973 Ed., § 33-420; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(4), 28 DCR 3081.)

Legislative history of Law 4-29. — See note to § 33-501.

Editor's notes. — Subsection (b) of former

§ 33-521 was redesignated to be present § 33-566 upon the enactment of D.C. Law 4-29.

§ 33-567. Supervision by licensed practitioner.

A licensed practitioner, in good faith and in the course of professional practice only, may cause controlled substances to be administered by a nurse or intern under the licensed practitioner's direction and supervision. (Nov. 17, 1981, D.C. Law 4-52, § 3(c)(2), 28 DCR 4348.)

Legislative history of Law 4-52. — See note to § 33-541.

Subchapter VII. Drug Interdiction and Demand Reduction Fund.

§ 33-571. Establishment of Fund.

There is established within the District of Columbia Treasury a nonlapsing revolving fund to be known as the Drug Interdiction and Demand Reduction Fund ("Fund"), to be operated as an enterprise fund controlled by the Chief of the Metropolitan Police Department to receive all funds generated from fines collected and assets derived from the enforcement of § 33-543a or § 33-552. (Aug. 5, 1981, D.C. Law 4-29, § 701, as added June 13, 1990, D.C. Law 8-138, § 2(f), 37 DCR 2638.)

Legislative history of Law 8-50. — See note to § 33-501.

Legislative history of Law 8-138. — See note to § 33-543a.

Mayor to implement public information program. — See note to § 33-501.

§ 33-572. Funding and disbursements.

Any funds from whatever source derived shall be deposited as soon as practicable into the Fund. Any deposit of funds shall be secured in a manner consistent with deposit of revenues by the District of Columbia government. The Fund shall be distributed in the following descending order of priority:

(1) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and

(2) To fund substance abuse education, prevention, and treatment activities of the Alcohol and Drug Abuse Administration. (Aug. 5, 1981, D.C. Law 4-29, § 702, as added June 13, 1990, D.C. Law 8-138, § 2(f), 37 DCR 2638; Sept. 26, 1992, D.C. Law 9-155, § 2(b), 39 DCR 5679; Sept. 26, 1995, D.C. Law 11-52, § 809(a), 42 DCR 3684.)

Legislative history of Law 8-50. — See note to § 33-501.

Legislative history of Law 8-138. — See note to § 33-543a.

Legislative history of Law 9-123. — See note to § 33-573.

Legislative history of Law 9-155. — See note to § 33-573.

Legislative history of Law 10-253. — Law 10-253, the “Multiyear Budget Spending Reduction and Support Temporary Act of 1995,” was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Approved without the signature of the Mayor on January 27, 1995, it was assigned Act No. 10-401 and trans-

mitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Mayor to implement public information program. — See note to § 33-501.

§ 33-573. Grant Award Committee.

Repealed. September 26, 1995, D.C. Law 11-52, § 809(b), 42 DCR 3684.

Legislative history of Law 11-52. — See note to § 33-572.

Subchapter VIII. Anti-Loitering / Drug Free Zone.

§ 33-581. Definitions.

For the purposes of this subchapter, the term:

(1) “Chief of Police” means the Chief of the Metropolitan Police Department as the designated agent of the Mayor.

(2) “Disperse” means to depart from the designated drug free zone and not to reassemble within the drug free zone with anyone from the group ordered to depart for the duration of the zone.

(3) "Drug free zone" means public space on public property in an area not to exceed a square of 1000 feet on each side that is established pursuant to § 33-582.

(4) "Illegal drug" means the same as the term "controlled substance" § 33-501.

(5) "Police Department" means the Metropolitan Police Department. (June 3, 1997, D.C. Law 11-270, § 2, 43 DCR 4493.)

Emergency act amendments. — For temporary addition of subchapter, see §§ 2-6 of the Anti-Loitering/Drug Free Zone Emergency Act of 1996 (D.C. Act 11-278, May 29, 1996, 43 DCR 2974), §§ 2-6 of the Anti-Loitering/Drug Free Zone Legislative Review Emergency Act of 1996 (D.C. Act 11-319, July 31, 1996, 43 DCR 4487), §§ 2-6 of the Anti-Loitering/Drug Free Zone Congressional Review Emergency Act of 1996 (D.C. Act 11-426, October 28, 1996, 43 DCR 6331), §§ 2-6 of the Anti-Loitering/Drug Free Zone Second Congressional Review Emergency Act of 1996 (D.C. Act 11-468, December 30, 1996, 44 DCR 175), and §§ 2-6 of the Anti-Loitering/Drug Free Zone Congressional Re-

view Emergency Act of 1997 (D.C. Act 12-55, March 31, 1997, 44 DCR 2219).

Section 8 of D.C. Act 12-55 provides for the application of the act.

Legislative history of Law 11-270. — Law 11-270, the "Anti-Loitering Drug Free Zone," was introduced in Council and assigned Bill No. 11-441, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-321 and transmitted to both Houses of Congress for its review. D.C. Law 11-270 became effective on June 3, 1997.

§ 33-582. Procedure for establishing a drug free zone.

(a) The Chief of Police may declare any public area a drug free zone for a period not to exceed 120 consecutive hours. The Chief of Police shall inform each of the 7 Police District Commanders and the Council of the District of Columbia of the declaration of a drug free zone.

(b) In determining whether to designate a drug free zone, the Chief of Police shall consider the following:

(1) The occurrence of a disproportionately high number of arrests for the possession or distribution of illegal drugs in the proposed drug free zone within the preceding 6-month period;

(2) Any number of homicides related to the possession or distribution of illegal drugs that were committed in the proposed drug free zone within the preceding 6-month period;

(3) Objective evidence or verifiable information that shows that illegal drugs are being sold and distributed on public space on public property within the proposed drug free zone; and

(4) Any other verifiable information from which the Chief of Police may ascertain whether the health or safety of residents who live in the proposed drug free zone are endangered by the purchase, sale, or use of illegal drugs or other illegal activity. (June 3, 1997, D.C. Law 11-270, § 3, 43 DCR 4493.)

Section references. — This section is referred to in §§ 33-581 and 33-584.

Emergency act amendments. — For temporary addition of subchapter, see note to § 33-581.

Legislative history of Law 11-270. — See note to § 33-581.

§ 33-583. Notice of a drug free zone.

Upon the designation of a drug free zone, the Police Department shall mark each block within the drug free zone by using barriers, tape, or police officers that post the following information in the immediate area of, and borders around, the drug free zone:

(1) A statement that it is unlawful for a person to congregate in a group of 2 or more persons for the purposes of participating in the use, purchase, or sale of illegal drugs within the boundaries of a drug free zone, and to fail to disperse after being instructed to disperse by a uniformed officer of the Police Department who reasonably believes the person is congregating for the purpose of participating in the use, purchase, or sale of illegal drugs;

(2) The boundaries of the drug free zone;

(3) A statement of the effective dates of the drug free zone designation; and

(4) Any other additional notice to inform the public of the drug free zone. (June 3, 1997, D.C. Law 11-270, § 4, 43 DCR 4493.)

Emergency act amendments. — For temporary addition of subchapter, see note to § 33-581.

Legislative history of Law 11-270. — See note to § 33-581.

§ 33-584. Prohibition.

(a) It shall be unlawful for a person to congregate in a group of 2 or more persons in public space on public property within the perimeter of a drug free zone established pursuant to § 33-582 and to fail to disperse after being instructed to disperse by a uniformed officer of the Police Department who reasonably believes the person is congregating for the purpose of participating in the use, purchase, or sale of illegal drugs.

(b) In making a determination that a person is congregating in a drug free zone for the purpose of participating in the use, purchase, or sale of illegal drugs, the totality of the circumstances involved shall be considered. Among the circumstances which may be considered in determining whether such purpose is manifested are:

(1) The conduct of a person being observed, including, but not limited to, that such person is behaving in a manner raising a reasonable belief that the person is engaging or is about to engage in illegal drug activity, such as the observable distribution of small packages to other persons, the receipt of currency for the exchange of a small package, operating as a lookout, warning others of the arrival of police, concealing himself or herself or any object which reasonably may be connected to unlawful drug-related activity, or engaging in any other conduct normally associated by law enforcement agencies with the illegal distribution or possession of drugs;

(2) Information from a reliable source indicating that a person being observed routinely distributes illegal drugs within the drug free zone;

(3) Information from a reliable source indicating that the person being observed is currently engaging in illegal drug-related activity within the drug free zone;

(4) Such person is physically identified by the officer as a member of a gang or association which engages in illegal drug activity;

(5) Such person is a known unlawful drug user, possessor, or seller. For purposes of this chapter, the phrase a “known unlawful drug user, possessor, or seller” means a person who has, within the knowledge of the arresting officer, been convicted in any court of any violation involving the use, possession, or distribution of any of the substances referred to in § 33-514, § 33-516, § 33-518, § 33-520 or § 33-522; or is a person who displays physical characteristics of drug use, including, but not limited to, “needle tracks”;

(6) Such person has no other apparent lawful reason for congregating in the drug free zone, such as waiting for a bus or being near one’s own residence; and

(7) Any vehicle involved in the observed circumstances is registered to a known unlawful drug user, possessor, or seller, or a person for whom there is an outstanding arrest warrant for a crime involving drug-related activity. (June 3, 1997, D.C. Law 11-270, § 5, 43 DCR 4493.)

Section references. — This section is referred to in § 33-585.

Legislative history of Law 11-270. — See note to § 33-581.

Emergency act amendments. — For temporary addition of subchapter, see note to § 33-581.

§ 33-585. Penalties.

Any person who violates § 33-584 shall, upon conviction, be subject to a fine of not more than \$300, imprisonment for not more than 180 days, or both. (June 3, 1997, D.C. Law 11-270, § 6, 43 DCR 4493.)

Emergency act amendments. — For temporary addition of subchapter, see note to § 33-581.

Legislative history of Law 11-270. — See note to § 33-581.

CHAPTER 6. DRUG PARAPHERNALIA.

Sec.

33-601. Definitions.

33-602. Factors to be considered in determining whether object is paraphernalia.

Sec.

33-603. Prohibited acts.

33-603.1. Needle Exchange Program.

33-604. Property subject to forfeiture.

§ 33-601. Definitions.

For purposes of this chapter, the term:

(1) "Controlled substance" has the same meaning as that provided in § 33-501(4).

(2) "Court" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(3) "Drug paraphernalia" means:

(A) Kits or other objects used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(B) Kits or other objects used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) Isomerization devices or other objects used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(D) Testing equipment or other objects used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of a controlled substance;

(E) Scales and balances or other objects used, intended for use, or designed for use in weighing or measuring a controlled substance;

(F) Diluents and adulterants, including, but not limited to: quinine, hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting a controlled substance;

(G) Separation gins and sifters or other objects used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, Cannabis or any other controlled substance;

(H) Blenders, bowls, containers, spoons, and other mixing devices used, intended for use, or designed for use in compounding a controlled substance;

(I) Capsules, balloons, envelopes, glassy plastic bags, or zip-lock bags that measure 1 inch by 1 inch or less, and other containers used, intended for use, or designed for use in packaging small quantities of a controlled substance;

(J) Containers and other objects used, intended for use, or designed for use in storing or concealing a controlled substance;

(K) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting a controlled substance into the human body; and

(L) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing Cannabis, cocaine, hashish, hashish oil, or

any other controlled substance into the human body, including, but not limited to:

- (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (ii) Water pipes;
- (iii) Carburetion tubes and devices;
- (iv) Smoking and carburetion masks;
- (v) Roach clips;
- (vi) Miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (vii) Chamber pipes;
- (viii) Carburetor pipes;
- (ix) Electric pipes;
- (x) Air-driven pipes;
- (xi) Bonges;
- (xii) Ice pipes or chillers;
- (xiii) Wired cigarette papers; or
- (xiv) Cocaine freebase kits.

The term "drug paraphernalia" shall not include any article that is 50 years of age or older. (Sept. 17, 1982, D.C. Law 4-149, § 2, 29 DCR 3369; June 13, 1990, D.C. Law 8-138, § 3(a), 37 DCR 2638; Apr. 9, 1997, D.C. Law 11-213, § 2(a), 43 DCR 4990.)

Section references. — This section is referred to in §§ 33-604 and 45-2559.1.

Effect of amendments. — D.C. Law 11-213 inserted "glassy plastic bags, or zip-lock bags that measure 1 inch by 1 inch or less" in (3)(I).

Legislative history of Law 4-149. — Law 4-149 was, the "Drug Paraphernalia Act of 1982," introduced in Council and assigned Bill No. 4-5, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 25, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-50. — See note to § 33-501.

Legislative history of Law 8-138. — See note to § 33-543a.

Legislative history of Law 11-213. — Law 11-213, the "Drug Paraphernalia Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-466, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 3,

1996, and July 17, 1996, respectively. Signed by the Mayor on August 9, 1996, it was assigned Act No. 11-391 and transmitted to both Houses of Congress for its review. D.C. Law 11-213 became effective on April 9, 1997.

Editor's notes. — Former Chapter 6 of this title, containing §§ 33-601 to 33-612, was repealed by § 604(a)(1) of D.C. Law 4-29. As to present provisions concerning controlled substances, see Chapter 5 of this title.

Drug paraphernalia more than 50 years old. — Any object otherwise shown to fall within the provisions of the Drug Paraphernalia Act will be presumed to be less than 50 years old unless the defendant raises a genuine issue of fact with respect to the age of the object. Where the defendant does not meet that burden of production, it will be the government's burden to prove beyond a reasonable doubt that the alleged drug paraphernalia are less than 50 years old. *Smith v. United States*, App. D.C., 522 A.2d 1274 (1987).

Cited in *District of Columbia v. Sellers*, 117 WLR 1017 (Super. Ct. 1989); *Byrd v. United States*, App. D.C., 579 A.2d 725 (1990).

§ 33-602. Factors to be considered in determining whether object is paraphernalia.

- (a) In determining whether an object is drug paraphernalia, a court or other

authority shall consider, in addition to all other logically and legally relevant factors, the following factors:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) The proximity of the object, in time and space, to a violation of § 33-603(a) or to a controlled substance;
- (3) The existence of any residue of a controlled substance on the object;
- (4) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of § 33-603(a); the innocence of an owner, or of anyone in control of the object, as to a violation of § 33-603(a) shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (5) Instructions, oral or written, provided with the object concerning its use;
- (6) Descriptive materials accompanying the object which explain or depict its use;
- (7) National and local advertising concerning the use of the object;
- (8) The manner in which the object is displayed for sale;
- (9) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, including, but not limited to, a licensed distributor or dealer of tobacco products;
- (10) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- (11) The existence and scope of legitimate uses for the object in the community; and
- (12) Expert testimony concerning its use.

(b) Where the alleged violation of the act included the sale of glassy plastic bags or zip-lock bags that measure 1 inch by 1 inch or less and occurred at a commercial retail or wholesale establishment, the court or other authority may infer that the item sold is drug paraphernalia, based on the size of the bags, the packaging of the bags, and a consideration of the factors in subsection (a) of this section. (Sept. 17, 1982, D.C. Law 4-149, § 3, 29 DCR 3369; Apr. 9, 1997, D.C. Law 11-213, § 2(b), 43 DCR 4990.)

Section references. — This section is referred to in § 33-604.

Effect of amendments. — D.C. Law 11-213 added (b).

Legislative history of Law 4-149. — See note to § 33-601.

Legislative history of Law 11-213. — See note to § 33-601.

Cited in Smith v. United States, App. D.C., 522 A.2d 1274 (1987).

§ 33-603. Prohibited acts.

(a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inhale, ingest, or otherwise introduce into the human

body a controlled substance. Whoever violates this subsection shall be imprisoned for not more than 30 days or fined for not more than \$100, or both.

(b) It is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowingly, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Whoever violates this subsection shall be imprisoned for not more than 6 months or fined for not more than \$1,000, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this chapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than \$5,000, or both.

(c) Any person 18 years of age or over who violates subsection (b) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his or her junior is guilty of a special offense and upon conviction may be imprisoned for not more than 8 years, fined not more than \$15,000, or both.

(d) Where the violation of the section involves the selling of drug paraphernalia by a commercial retail or wholesale establishment, the court shall revoke the license of any licensee convicted of a violation of this section and the certificate of occupancy for the premises. (Sept. 17, 1982, D.C. Law 4-149, § 4, 29 DCR 3369; Mar. 14, 1985, D.C. Law 5-159, § 14, 32 DCR 30; June 13, 1990, D.C. Law 8-138, § 3(b), 37 DCR 2638; Apr. 9, 1997, D.C. Law 11-213, § 2(c), 43 DCR 4990.)

Section references. — This section is referred to in §§ 33-602, 33-603.1, and 33-604.

Effect of amendments. — D.C. Law 11-213 added (d).

Legislative history of Law 4-149. — See note to § 33-601.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-50. — Law 8-50 was introduced in Council and assigned Bill No. 8-295. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-83 and transmitted to both Houses of Congress for its review. D.C. Law 8-50 became effective on October 19, 1989.

Legislative history of Law 8-138. — Law 8-138 was introduced in Council and assigned Bill No. 8-495, which was referred to the Com-

mittee on the Judiciary. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-194 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-213. — See note to § 33-601.

Right to jury trial. — The Council is the authoritative legislative voice for the District of Columbia for the purposes of representing its citizens' opinions on the "seriousness" of charged offenses for the purposes of determining the right to a jury trial; the additional statutory penalties to which the D.C. Superior Court must look in such an inquiry are only those enacted into law by the Council. Federal statutes cannot be utilized as a measurement of the Council's legislative will in determining a defendant's right to a jury trial. *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995).

Evidence of intent. — Where drugs and paraphernalia seized were packaged in a manner consistent with distribution, the evidence was sufficient for the jury to infer the intent to distribute. *Earle v. United States*, App. D.C., 612 A.2d 1258 (1992).

Evidence sufficient for conviction. — Evidence was sufficient to convict defendant on drug distribution activities in her home. *Williams v. United States*, App. D.C., 604 A.2d 420 (1992); *Spinner v. United States*, App. D.C., 618 A.2d 176 (1992).

Guilt as to lesser included offense question for jury. — Where defendant was charged with possession of drug paraphernalia in violation of § 33-550, and was later acquitted of this charge by a judge, consideration of guilt under a lesser included paraphernalia offense defined in § 33-603 was for a jury, and not for a judge. *Chambers v. United States*, App. D.C., 564 A.2d 26 (1989).

Variance between allegation and proof was not fatal where the information charged defendant with illegal possession of drug paraphernalia that could be administered subcutaneously, under § 33-550, while the government proved that defendant possessed a pipe used to ingest drugs into the body, an offense under this section. *Byrd v. United States*, App. D.C., 579 A.2d 725 (1990).

Harmless error. — Where statement was cumulative of evidence that had already been admitted without objection, and given the powerful evidence that the defendant was alone

with the contraband, the admission of the hearsay statement was harmless error. *Carter v. United States*, App. D.C., 614 A.2d 542 (1992).

Cited in *Smith v. United States*, App. D.C., 522 A.2d 1274 (1987); *Briscoe v. United States*, App. D.C., 528 A.2d 1243 (1987); *United States v. Edelen*, App. D.C., 529 A.2d 774 (1987); *United States v. Zarbough*, 115 WLR 273 (Super. Ct. 1987); *United States v. Towles*, 116 WLR 501 (Super. Ct. 1988); *United States v. Dixon*, 117 WLR 9 (Super. Ct. 1989); *Williams v. United States*, App. D.C., 576 A.2d 700 (1990); *Carr v. United States*, App. D.C., 585 A.2d 158 (1991); *Berger v. District of Columbia*, App. D.C., 597 A.2d 407 (1991); *Goldsberry v. United States*, App. D.C., 598 A.2d 376 (1991); *Speight v. United States*, App. D.C., 599 A.2d 794 (1991); *Jamison v. United States*, App. D.C., 600 A.2d 65 (1991); *Washington v. United States*, App. D.C., 600 A.2d 1079 (1991); *Byrd v. United States*, App. D.C., 618 A.2d 596 (1992); *Long v. United States*, App. D.C., 623 A.2d 1144 (1993); *Minor v. United States*, App. D.C., 623 A.2d 1182 (1993); *Brown v. United States*, App. D.C., 627 A.2d 499 (1993); *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995); *Foote v. United States*, App. D.C., 670 A.2d 366 (1996).

§ 33-603.1. Needle Exchange Program.

(a) The Mayor is authorized to establish within the Department of Human Services a Needle Exchange Program ("Program"), which may provide clean hypodermic needles and syringes to injecting drug users. Counseling on substance abuse addiction and information on appropriate referrals to drug treatment programs shall be made available to each person to whom a hypodermic needle and syringe is provided. Counseling and information on the Human Immunodeficiency Virus ("HIV") and appropriate referrals for HIV testing and services shall be made available to each person to whom a hypodermic needle and syringe is provided.

(b) The Program authorized by subsection (a) of this section shall be administered by the Commission on Public Health in the Department of Human Services. Only qualified medical officers, registered nurses, counselors, community based organizations, or other qualified individuals specifically designated by the Commissioner of Public Health shall be authorized to exchange hypodermic needles and syringes under the provisions of subsections (c) through (i) of this section.

(c) The Commissioner of Public Health shall provide all persons participating in the Program authorized by subsection (a) of this section with a written statement of the person's participation in the Program, signed by the Commissioner of Public Health, or the Commissioner's designee. No person participating in the Program shall be required to carry such a statement.

(d) Notwithstanding the provisions of § 33-603 or § 33-550, it shall not be unlawful for any person who is participating in the Program authorized by subsection (a) of this section to possess, or for any person authorized by

subsection (b) of this section, to deliver any hypodermic syringe or needle distributed as part of the Program.

(e) The District of Columbia, its officers, or employees shall not be liable for any injury or damage resulting from use of, or contact with, any needle exchanged as part of the Program authorized by subsection (a) of this section.

(e-1) A community based organization or other qualified individuals designated by the Commissioner of Public Health under subsection (b) of this section shall not be liable for any injury or damage resulting from the use of, or contact with, any needle exchanged as part of the Program authorized by subsection (a) of this section, unless such injury or damage is a direct result of the gross negligence or intentional misconduct of such community based organization or other qualified individuals.

(f) All needles and syringes distributed by the Commission of Public Health as part of the Program shall be made identifiable through the use of permanent markings, or color coding, or any other method determined by the Commissioner to be effective in identifying the needles and syringes.

(g) The Mayor shall issue an annual evaluation report on the Program. The report shall address the following components:

- (1) Number of Program participants served daily;
- (2) Demographics of Program participants, including age, sex, ethnicity, address or neighborhood of residence, education, and occupation;
- (3) Impact of Program on behaviors which put the individual at risk for HIV transmission;
- (4) Number of materials distributed, including needles, bleach kits, alcohol swabs, and educational materials;
- (5) Impact of Program on incidence of HIV infection in the District. In determining this, the Mayor shall take into account the following factors:
 - (A) Annual HIV infection rates among injecting drug users entering drug treatment programs in the District;
 - (B) Estimates of the HIV infection rate among injecting drug users in the District at the start of the Program year as compared to the rate at the end of the third Program year;
 - (C) The annual number of HIV-positive mothers giving birth in the District;
 - (D) Annual estimates of the HIV infection rate among newborns; and
- (6) Costs of the Program versus direct and indirect costs of HIV infection and Acquired Immunodeficiency Syndrome ("AIDS") in the District.

(h) Data on Program participants shall be obtained through interviews. The interviews shall be used to obtain the following information:

- (1) Reasons for participating in Program;
- (2) Drug use history, including type of drug used, frequency of use, method of ingestion, length of time drugs used, and frequency of needle sharing;
- (3) Sexual behavior and history, including the participant's self-described sexual identity, number of sexual partners in the past 30 days or 6 months, number of sexual partners who were also intravenous drug users, frequency of condom use, and number of times sex was used in exchange for money or drugs;

(4) Health assessment, including whether the participant has been tested for HIV infection and whether the results were negative or positive; and

(5) Impact of Program on the participant's behavior and attitudes, including any increase or decrease in drug use or needle sharing, changes in high-risk sexual behaviors, or willingness to follow through with drug treatments.

(i) The Mayor shall explore the feasibility of establishing a system to test used needles and syringes received by the Commission of Public Health for HIV antibody contamination. The Mayor shall prepare a feasibility report on needle and syringe testing and shall submit this report to the Council for review no later than 120 days after June 30, 1992. If the report finds that needles and syringe testing would be beneficial and feasible to implement, such a system shall be incorporated into the Program. (Sept. 17, 1982, D.C. Law 4-149, § 4a, as added Mar. 25, 1993, D.C. Law 9-252, § 2, 40 DCR 787; Mar. 14, 1995, D.C. Law 10-207, § 2, 41 DCR 7717; Apr. 7, 1995, D.C. Law 11-3, § 2, 42 DCR 1070; Mar. 22, 1996, D.C. Law 11-101, § 2, 43 DCR 399; Apr. 9, 1997, D.C. Law 11-255, § 37, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-101, in (b), substituted “administered” for “operated” in the first sentence and rewrote the second sentence; in (e), substituted “The District ... shall not be” for “Neither the District of Columbia nor its officers or employees shall be” and made punctuation changes; and inserted (e-1).

Section 37 of D.C. Act 11-255 validated previously made stylistic corrections in (a) and (e-1).

Legislative history of Law 9-164. — Law 9-164 was introduced in Council and assigned Bill No. 9-541, which was retained by Council. The Bill was adopted on first and second readings on June 23, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-259 and transmitted to both Houses of Congress for its review. D.C. Law 9-164 became effective on September 29, 1992.

Legislative history of Law 9-252. — Law 9-252 was introduced in Council and assigned Bill No. 9-542, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-398 and transmitted to both Houses of Congress for its review. D.C. Law 9-252 became effective on March 25, 1993.

Legislative history of Law 10-207. — Law 10-207, the “Prevention of the Spread of the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-793. The Bill was adopted on first and second readings on October 4, 1994, and November 1, 1994, respectively. Signed by the Mayor on November 22,

1994, it was assigned Act No. 10-345 and transmitted to both Houses of Congress for its review. D.C. Law 10-207 became effective on March 14, 1995.

Legislative history of Law 11-3. — Law 11-3, the “Prevention of the Spread of the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome Amendment Act of 1994,” was introduced in Council and assigned Bill No. 11-38, which was retained by council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Signed by the Mayor on February 17, 1995, it was assigned Act No. 11-10 and transmitted to both Houses of Congress for its review. D.C. Law 11-3 became effective on April 7, 1995.

Legislative history of Law 11-44. — Law 11-44, the “Prevention of Transmission of the Human Immunodeficiency Virus Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-311. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on June 28, 1995, it was assigned Act No. 11-82 and transmitted to both Houses of Congress for its review. D.C. Law 11-44 became effective on September 16, 1995.

Legislative history of Law 11-101. — Law 11-101, the “Prevention of Transmission of the Human Immunodeficiency Virus Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-324, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 25, 1996, it was assigned Act No. 11-190 and transmitted to both Houses of Congress for its re-

view. D.C. Law 11-101 became effective on March 22, 1996.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905. The Bill was adopted on

first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective April 9, 1997.

§ 33-604. Property subject to forfeiture.

The following shall be subject to forfeiture immediately, and no property right shall exist in them after a final conviction by a court:

(1) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;

(2) All money or currency which shall be found in close proximity to drug paraphernalia or which otherwise has been used or intended for use in connection with the manufacture, distribution, delivery, sale, use, dispensing, or possession of drug paraphernalia in violation of § 33-603; and

(3) All drug paraphernalia as defined in §§ 33-601 and 33-602 and prohibited in § 33-603. (Sept. 17, 1982, D.C. Law 4-149, § 5, 29 DCR 3369.)

Cross references. — As to return of property by Property Clerk, see § 4-157.

Legislative history of Law 4-149. — See note to § 33-601.

Cited in United States v. Zarbough, 115 WLR 273 (Super. Ct. 1987); District of Columbia v. 313 M St., App. D.C., 633 A.2d 820 (1993).

CHAPTER 7. PRESCRIPTION DRUG PRICE INFORMATION.

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Sec.

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33-743. Inspection of pricing records and practices; cease and desist orders.

Subchapter I. General Provisions.

§ 33-701. Definitions.

As used in this chapter, the term:

(1) "Issue date" means the 1st day of the 4th full calendar month after April 7, 1977, and the day following the end of each year after the 1st such issue date.

(2) "Most commonly used prescription drugs" means the prescription drug products which were most frequently paid for by the Medicaid program operated by the District of Columbia government under a state plan filed in accordance with § 1902 of the Social Security Act (§ 1396a of Title 42, United States Code), in the 3 consecutive months ending 60 days before an issue date.

(3) "Pharmacy" means a shop or other place at which drugs, chemicals, or poisons, as those terms are used in Chapter 20 of Title 2, are sold at retail.

(4) "Person" means any individual, partnership, corporation, organization, or association.

(5) "Professional and convenience services" includes, but is not limited to:

- (A) Patient consultations;
- (B) Patient profiles;
- (C) Prescription charting;
- (D) Emergency prescription service;
- (E) Personal delivery;
- (F) Mail delivery;

(G) Credit services; and

(H) Staying open 24 hours per day.

(6) "Current selling price" means all charges of a particular pharmacy to a consumer with respect to a prescribed drug, except additional charges for professional and convenience services. (1973 Ed., § 33-801; Sept. 10, 1976, D.C. Law 1-81, § 2, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 2, 23 DCR 8743.)

Legislative history of Law 1-81. — Law 1-81 was introduced in Council and assigned Bill No. 1-80, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 3, 1976, and May 18, 1976, respectively. Signed by the Mayor on June 16, 1976, it was assigned Act No. 1-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-114. — Law 1-114 was introduced in Council and assigned Bill No. 1-324, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 11, 1977, it was assigned Act No. 1-204 and transmitted to both Houses of Congress for its review.

Subchapter II. Prescription Drug Price Posting.

§ 33-711. List of most commonly used prescription drugs.

Thirty days prior to each issue date, the Department of Human Services shall furnish to the Office of Consumer Protection a list of the 100 most commonly used prescription drugs. (1973 Ed., § 33-811; Sept. 10, 1976, D.C. Law 1-81, title I, § 101, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), 23 DCR 8743.)

Legislative history of Law 1-81. — See note to § 33-701.

Legislative history of Law 1-114. — See note to § 33-701.

References in text. — The Department of

Human Resources was replaced by the Department of Human Services, pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 33-712. Posters to be furnished pharmacies; contents.

Ten days prior to each issue date, the Office of Consumer Protection shall furnish to each pharmacy in the District a poster suitable for display of a type style and size so as to be easily readable at a reasonable distance, which:

(1) Lists the 100 most commonly used prescription drugs in 2 commonly prescribed quantities, with space for the current selling price of each quantity;

(2) Lists professional and convenience services, with space for each pharmacy to indicate:

(A) Whether it offers each service; and

(B) The additional charge, if any, for that service;

(3) Contains a heading stating "OUR CURRENT PRESCRIPTION PRICES" and containing spaces for the insertion of the name and address of each pharmacy;

(4) Indicates in simple language that:

(A) The price of a prescription drug is often different at different pharmacies, and that the consumer may want to make a comparison on the cost of a prescription;

(B) The pharmacy may be able to substitute a less expensive drug which is therapeutically equivalent to the one prescribed by the consumer's doctor, unless the consumer does not approve; and

(C) The consumer has the right to know the exact price of a prescription before it is filled; and

(5) Provides space for each pharmacy to indicate the eligibility and terms of any discount it offers on legend drugs. (1973 Ed., § 33-812; Sept. 10, 1976, D.C. Law 1-81, title I, § 102, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(c), 23 DCR 8743.)

Legislative history of Law 1-81. — See note to § 33-701.

Legislative history of Law 1-114. — See note to § 33-701.

§ 33-713. Completion and display of posters.

On and after each issue date, each pharmacy shall legibly post on the poster its current selling prices for the 100 most commonly used prescription drugs, the professional and convenience services it offers and the additional charges therefor, and the eligibility and terms of any discount it offers on prescription drugs. The completed poster shall be displayed prominently in the immediate vicinity of the prescription drug service area in such a manner as to be easily visible to consumers without having to obtain permission or assistance of an employee of the pharmacy. (1973 Ed., § 33-813; Sept. 10, 1976, D.C. Law 1-81, title I, § 103, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), (b), 23 DCR 8743.)

Section references. — This section is referred to in § 33-741.

Legislative history of Law 1-114. — See note to § 33-701.

Legislative history of Law 1-81. — See note to § 33-701.

§ 33-714. Quotation of prices, services and charges.

The current selling price of all prescription drugs (including those not required to be posted) dispensed by each pharmacy, and the pharmacy's discounts and professional and convenience services and charges therefor, shall be available and be quoted, correctly and free of charge, by the pharmacy upon request identifying the name, strength, and quantity prescribed by a physician, whether the request is made in person, in writing or by telephone. (1973 Ed., § 33-814; Sept. 10, 1976, D.C. Law 1-81, title I, § 104, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(b), (d), 23 DCR 8743.)

Section references. — This section is referred to in § 33-741.

Legislative history of Law 1-114. — See note to § 33-701.

Legislative history of Law 1-81. — See note to § 33-701.

§ 33-715. Services and drugs to be furnished at prices posted; exception.

No pharmacy may fail to provide to any consumer the discounts and services stated on the poster, under the eligibility, price, and other terms there stated. Every sale of one of the 100 most commonly used prescription drugs, in a quantity and strength which requires the price of the drug to be posted, shall be at the posted price, unless a decrease in price is authorized by subchapter IV of this chapter. (1973 Ed., § 33-815; Sept. 10, 1976, D.C. Law 1-81, title I, § 105, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), 23 DCR 8743.)

Section references. — This section is referred to in § 33-741.

Legislative history of Law 1-114. — See note to § 33-701.

Legislative history of Law 1-81. — See note to § 33-701.

§ 33-716. Consumer information to reflect actual charges.

A pharmacy may charge any current selling price, discount, service availability or service charge, at any time; provided, that the poster and sources of consumer information are adjusted accordingly. (1973 Ed., § 33-816; Sept. 10, 1976, D.C. Law 1-81, title I, § 106, 23 DCR 2460.)

Legislative history of Law 1-81. — See note to § 33-701.

Subchapter III. Advertising.

§ 33-721. Interference with disclosure of price information prohibited.

No person may directly or indirectly prohibit, hinder or restrict or attempt to prohibit or restrict the disclosure by any pharmacy, government agency, or other person, of accurate price information regarding prescription drugs, including such disclosure made by means of advertisements in print or broadcast media, or by other means. (1973 Ed., § 33-821; Sept. 10, 1976, D.C. Law 1-81, title II, § 201, 23 DCR 2460.)

Legislative history of Law 1-81. — See note to § 33-701.

Subchapter IV. Substitution of Therapeutically Equivalent Drugs.

§ 33-731. Publication of formulary; procedure for determining contents.

The Department of Human Services shall publish a formulary of drug products, with the chemical or generic name of each, that are determined to be therapeutically equivalent to specified brand name drug products. The Depart-

ment shall determine the contents of the formulary only after recommendations are made by a committee of 9 members appointed by the Director of that Department. The committee shall consist of one licensed physician and one licensed pharmacist employed by the Department, 2 licensed physicians and 3 licensed pharmacists in private practice in the District, and 2 pharmacologists on the faculty of a university in the District. The recommendations of the committee shall require concurrence of a majority of the members of the committee. The committee's recommendations shall be published in the District of Columbia Register as proposed regulations of the Department. The Department's determinations shall be made in accordance with §§ 1-1503, 1-1505 and 1-1506 and published in the District of Columbia Register as final regulations. The committee shall review the published formulary annually, or whenever an amendment to it appears necessary. The committee shall publish its 1st recommendations no later than 8 months after April 7, 1977. (1973 Ed., § 33-831; Sept. 10, 1976, D.C. Law 1-81, title III, § 301, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(a), 23 DCR 8743.)

Legislative history of Law 1-81. — See note to § 33-701.

Legislative history of Law 1-114. — See note to § 33-701.

References in text. — The Department of

Human Resources was replaced by the Department of Human Services, pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 33-732. Dispensation of equivalent products by pharmacists — Conditions under which authorized; prices for prescribed drugs.

(a) When a pharmacist receives a prescription for a brand name drug for which 1 or more equivalent drugs are listed in the formulary prepared by the Department of Human Services, the pharmacist may dispense any 1 of the listed equivalent products, and, if a listed equivalent product is dispensed, the pharmacist must dispense the product in stock having the lowest current selling price. The pharmacist shall do so if the purchaser so requests, except as provided in § 33-733.

(b) When a pharmacist receives a prescription for a drug by generic name, the pharmacist shall dispense the listed product in stock having the lowest current selling price.

(c) Until the first promulgation of the formulary by the Department of Human Services, pharmacists licensed in the District shall have the same power which they had prior to September 10, 1976, to exercise their professional judgment in selecting the drug product to be dispensed. (1973 Ed., § 33-832; Sept. 10, 1976, D.C. Law 1-81, title III, § 302, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(a), 23 DCR 8743.)

Section references. — This section is referred to in §§ 33-733, 33-734, and 33-735.

Legislative history of Law 1-81. — See note to § 33-701.

Legislative history of Law 1-114. — See note to § 33-701.

References in text. — The Department of Human Resources was replaced by the Department of Human Services, pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 33-733. Same — Conditions under which prohibited.

The pharmacist shall not dispense an equivalent drug product under § 33-732 if:

(1) The person purchasing the drug product or the patient for whom it is intended indicates a preference for the drug product actually prescribed;

(2) The prescriber, in the case of a written prescription order signed by the prescriber, writes in the prescriber's own handwriting "dispense as written" or "D.A.W." or a similar notation. A procedure for checking or initialing a box, preprinted or stamped on a prescription form, will not constitute an acceptable notation;

(3) The prescriber, in the case of a prescription communicated by telephone, expressly indicates the prescription is to be dispensed as communicated, and this indication is noted in the pharmacist's own handwriting in the manner provided in subsection (b) of this section. (1973 Ed., § 33-833; Sept. 10, 1976, D.C. Law 1-81, title III, § 303, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(a), 23 DCR 8743.)

Section references. — This section is referred to in § 33-732.

Legislative history of Law 1-81. — See note to § 33-701.

Legislative history of Law 1-114. — See note to § 33-701.

§ 33-734. Same — Recording and labeling required.

When a drug is substituted under § 33-732, the pharmacist shall record on the prescription form the drug substituted by name and manufacturer, and retain the form for inspection by District officials. The pharmacist shall also label the prescription container with the name of the drug substituted, unless the prescribing physician writes "do not label," or words of similar import, on the prescription, or, in communicating the prescription by telephone, orders that the container not be so labelled. (1973 Ed., § 33-834; Sept. 10, 1976, D.C. Law 1-81, title III, § 304, 23 DCR 2460.)

Legislative history of Law 1-81. — See note to § 33-701.

§ 33-735. Same — Consideration as practice of medicine or evidence of negligence; failure of physician to specify specific brand.

(a) The substitution of therapeutically equivalent drugs by a licensed pharmacist under § 33-732 shall not constitute the practice of medicine.

(b) Substitution of drugs made in accordance with § 33-732 shall not constitute evidence of negligence or improper pharmacy practice if the substitution was made within reasonable and prudent pharmacy practice or if the prescribed and substituted drugs were therapeutically equivalent drugs as determined under this chapter.

(c) Failure of a licensed physician to specify that a specific brand is necessary for the particular patient shall not constitute evidence of negligence

unless the physician had reasonable cause to believe that the health of the patient required the use of that brand and no other. (1973 Ed., § 33-835; Sept. 10, 1976, D.C. Law 1-81, title III, § 305, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(b), 23 DCR 8743.)

Legislative history of Law 1-81. — See note to § 33-701.

Legislative history of Law 1-114. — See note to § 33-701.

Subchapter V. Enforcement.

§ 33-741. Violations of posting provisions.

(a) Any pharmacy which sells a legend drug in violation of § 33-713, § 33-714, or § 33-715 is liable to the buyer, or the provider or insurer of the buyer, for the full amount charged for the drug.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 27 of Title 6. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 27 of Title 6. (1973 Ed., § 33-841; Sept. 10, 1976, D.C. Law 1-81, title IV, § 401, 23 DCR 2460; Mar. 8, 1991, D.C. Law 8-237, § 20, 38 DCR 314.)

Legislative history of Law 1-81. — See note to § 33-701.

Legislative history of Law 8-237. — Law 8-237 was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs.

The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

§ 33-742. Restraints of trade.

Any person who, by any means, interferes with, prevents, discourages, or attempts to interfere with, prevent, or discourage: (1) any disclosure of, or attempt to disclose, or action necessary to disclose, substantially accurate prices, discounts, services, or other information concerning any prescription drug, whether or not such disclosure is authorized or directed in this chapter, or is through any media or other form of communication, or is made or to be made by any publisher, broadcaster, pharmacy, pharmacist, advertiser, drug manufacturer, wholesaler, or chain, government agency, or any other person; or (2) any retail drug price-setting, substitution, or marketing policy or action required, encouraged or permitted by, or consistent with this chapter; has committed a restraint of trade, and has caused a tortious injury in the District of Columbia as described in § 13-423(a)(3) and (4), and shall be liable for treble civil damages to each and every person (including a pharmacy or pharmacist), health insurer, and government agency the object of or injured by such interference, prevention, discouragement, or attempt to interfere, prevent, or discourage. Any action which jeopardizes in any way, or raises the net price of, the supply from manufacturers or wholesalers of drugs to any pharmacy, government agency, health insurer, or person providing or paying for a drug in

the District may comprise such an interference, prevention, discouragement, or attempt. (1973 Ed., § 33-842; Sept. 10, 1976, D.C. Law 1-81, title IV, § 402, 23 DCR 2460.)

Legislative history of Law 1-81. — See note to § 33-701.

§ 33-743. Inspection of pricing records and practices; cease and desist orders.

After reasonable notice, the Office of Consumer Protection may inspect the pricing records and practices of any pharmacy or other person, to assure compliance with this chapter. After appropriate notice and hearing, the Office may, if it finds that any person has violated this chapter, issue a cease and desist order against continued or future violation, and such other orders as may otherwise be within powers of that Office. (1973 Ed., § 33-843; Sept. 10, 1976, D.C. Law 1-81, title IV, § 403, 23 DCR 2460.)

Legislative history of Law 1-81. — See note to § 33-701.

CHAPTER 8. DONATED FOOD.

Sec.

33-801. Immunity from liability.

33-802. Authority of Mayor.

§ 33-801. Immunity from liability.

(a) All other provisions of law notwithstanding, a good faith donor of food which is not known or believed to be unfit for human consumption, as defined in § 8-6:102 of Title 8 of the District of Columbia Health Regulations (published as Title 8 of the District of Columbia Regulations; 1962 Revision, as amended) ("Health Regulations"), at the time it is donated to a bona fide charitable or not-for-profit organization shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the gross negligence or intentional misconduct of such donor.

(b) All other provisions of law notwithstanding, a bona fide charitable or not-for-profit organization which in good faith receives and distributes food which is not known or believed to be unfit for human consumption, as defined in § 8-6:102 of Title 8 of the Health Regulations, at the time it is distributed, without charge or at a nominal charge, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the gross negligence or intentional misconduct of such organization. (Oct. 8, 1981, D.C. Law 4-39, § 2, 28 DCR 3391; Mar. 8, 1991, D.C. Law 8-245, § 2, 38 DCR 367.)

Legislative history of Law 4-39. — Law 4-39 was, the "Good Faith Donor and Donee Act of 1981," introduced in Council and assigned Bill No. 4-4, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-66 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-245. — Law 8-245 was introduced in Council and assigned

Bill No. 8-550, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-328 and transmitted to both Houses of Congress for its review.

Editor's notes. — Section 8-6:102 of Title 8 of the District of Columbia Health Regulations, referred to in (a) has been superseded by the DCMR. See now 23 DCMR 9902.

§ 33-802. Authority of Mayor.

Nothing in this chapter shall restrict the authority of the Mayor of the District of Columbia to inspect, condemn, denature, destroy, seize, or remove food for human consumption pursuant to § 22-3418. (Oct. 8, 1981, D.C. Law 4-39, § 3, 28 DCR 3391.)

Legislative history of Law 4-39. — See note to § 33-801.

CHAPTER 9. FOOD PRODUCTION AND URBAN GARDENS PROGRAM.

Sec.

33-901. Definitions.

33-902. Food production and urban gardens program established.

Sec.

33-903. Mayor to propose rules; submission to Council; approval.

§ 33-901. Definitions.

For the purposes of this chapter, the term:

(1) "Food" means any substance produced from the ground for human consumption and nourishment, such as vegetables, fruits, and nuts.

(2) "Urban gardens" means any vacant lot used for the growing of food, flowers, or greenery.

(3) "Vacant lot" means any lot in the District of Columbia on which there is no lawful structure. (Feb. 28, 1987, D.C. Law 6-210, § 2, 34 DCR 699.)

Legislative history of Law 6-210. — Law 6-210, the "Food Production and Urban Gardens Program Act of 1986," was introduced in Council and assigned Bill No. 6-228, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings

on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-270 and transmitted to both Houses of Congress for its review.

§ 33-902. Food production and urban gardens program established.

Pursuant to § 419 of the District of Columbia Comprehensive Plan Act of 1984, the Mayor of the District of Columbia ("Mayor") shall establish a Food Production and Urban Gardens Program, which shall include, but not be limited to, the following elements:

(1) Collection and maintenance of an up-to-date and comprehensive inventory of vacant lots, listed by categories, including, but not limited to:

(A) Specific location, by address and by advisory neighborhood commission designation;

(B) Size; and

(C) Dates of availability, by voluntary donation and through negotiated agreement, for use in the Food Production and Urban Gardens Program;

(2) Public accessibility to the updated inventory of vacant lots described in paragraph (1) of this section by various means, including, but not limited to, publication of the inventory at least every 3 months in the District of Columbia Register; and

(3) Development, implementation, and promotion of policies that encourage the donation and cultivation of vacant lots for use in the Food Production and Urban Gardens Program, including, but not limited to:

(A) The development of standard agreement forms, to be made readily available for execution by citizens and the owners of vacant lots, which relieve owners of maintenance and insurance responsibilities in exchange for cultivation by citizens of urban gardens on vacant lots;

(B) The inclusion of community gardening projects in the summer employment programs operated by the District of Columbia government;

(C) The provision by the Cooperative Extension Service of the University of the District of Columbia of technical assistance and research in the form of educational materials and programs for citizen gardening and self-help food production efforts;

(D) Coordination with the Board of Education of the District of Columbia, both on the use of suitable portions of buildings and grounds for urban gardens, and on the development of instructional programs in science and gardening that prepare students for related career opportunities such as restaurant produce supply, landscaping, and floral design;

(E) The encouragement of food buying clubs and produce markets throughout the District of Columbia to increase the supply of and demand for urban gardens; and

(F) The development of incentives and community outreach efforts to promote the availability of vacant lots for participation in the Food Production and Urban Gardens Program. (Feb. 28, 1987, D.C. Law 6-210, § 3, 34 DCR 699.)

Legislative history of Law 6-210. — See District of Columbia Comprehensive Plan Act of 1984,” referred to in the introductory language, is found in § 3 of D.C. Law 5-76.

References in text. — “Section 419 of the

§ 33-903. Mayor to propose rules; submission to Council; approval.

Within 90 days of February 28, 1987, the Mayor shall develop proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council of the District of Columbia (“Council”) for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Feb. 28, 1987, D.C. Law 6-210, § 4, 34 DCR 699.)

Legislative history of Law 6-210. — See note to § 33-901.

CHAPTER 10. DRUG MANUFACTURE AND DISTRIBUTION LICENSURE.

Sec.

33-1001. Definitions.

33-1002. Prohibitions.

33-1003. License requirements.

33-1004. Licensure of a drug manufacturer, distributor, or wholesaler.

33-1005. Renewal of license.

33-1006. Conditional license.

33-1007. Registration of an out-of-state drug manufacturer, distributor, repackager, or wholesaler.

Sec.

33-1008. Inspections.

33-1009. Summary action.

33-1010. Suspension, denial, or revocation.

33-1011. Criminal action.

33-1012. Civil infractions.

33-1013. Cease and desist order; embargo.

33-1014. Rules.

33-1015. Exceptions.

§ 33-1001. Definitions.

For the purposes of this chapter, the term:

(1) "Distribute" means:

(A) To sell any drug for resale;

(B) To act as a broker, agent, distributor, jobber, or wholesaler of any drug; or

(C) To otherwise negotiate a sale for the resale of any drug.

(2) "Drug" means any substance as defined under § 2-2002.

(3) "Manufacture" means:

(A)(i) To prepare, produce, propagate, compound, convert, process, or package a drug, either directly or indirectly, by extraction from a substance of natural origin, or independently by means of chemical synthesis;

(ii) Any packaging or repackaging of the substance or drug; or

(iii) Labeling or relabeling of any drug package or container to further distribution from the original place of manufacture to the person who makes final delivery, distribution, or sale to the ultimate consumer or user.

(B) "Manufacture" does not include the preparation or compounding of a drug by a pharmacist, practitioner, or any other authorized person who prepares or compounds a drug incidental to administering or dispensing a drug or conducting research, teaching, or chemical analysis on a drug in the course of professional practice.

(4) "Wholesaler" means any person, including but not limited to, a manufacturer, repackager, own label distributor, jobber, broker, agent, pharmacy, private label distributor, distributor warehouse, wholesale drug warehouse, independent wholesale drug trader, chain drug warehouse, retail pharmacy, or pharmacy that sells more than 5% of its drug inventory to a hospital or other pharmacy, which distributes a drug to a person other than a consumer or patient.

(5) "Conditional license" means a license issued pursuant to specific conditions. (June 13, 1990, D.C. Law 8-137, § 2, 37 DCR 2631.)

Legislative history of Law 8-137. — Law 8-137, the "District of Columbia Drug Manufacture and Distribution Licensure Act of 1990," was introduced in Council and assigned Bill No. 8-94, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill

was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-193 and transmitted to both Houses of Congress for its review.

§ 33-1002. Prohibitions.

No person shall:

(1) Manufacture, distribute, or wholesale any drug in the District of Columbia ("District") unless the person holds a license or registration as required by this chapter issued by the Mayor to manufacture, distribute, or wholesale drugs;

(2) Manufacture, distribute, or wholesale in the District, any drug that is adulterated, misbranded, or otherwise unfit for use;

(3) Engage in manufacturing activities under a license issued pursuant to this chapter unless performed under the personal and immediate supervision of a pharmacist licensed by the District of Columbia or by an individual certified by the Mayor as having scientific or technical training or experience to perform the duties required to ensure that the licensed activity is conducted in a manner that will protect the public health and safety;

(4) Display, cause, permit to be displayed, or possess a cancelled, revoked, suspended, fictitious, or fraudulently altered license to manufacture, distribute, or wholesale drugs;

(5) Lend or transfer a license to manufacture, distribute, or wholesale drugs;

(6) Fail or refuse to surrender to the Mayor a license to manufacture, distribute, or wholesale a drug, if the license has been suspended, revoked, or cancelled, or if the manufacture, distribution, or wholesale activity has terminated;

(7) Permit an unlawful use of a license;

(8) Misrepresent or fail to state a material fact to the Mayor with respect to a license application or a licensee's activities;

(9) Falsely represent to any person that he or she is licensed;

(10) Obtain a drug unless the drug is obtained legally from a legally authorized manufacturer, distributor, or wholesaler; or

(11) Violate any provision of this chapter, rules issued pursuant to this chapter, or any applicable federal or District law. (June 13, 1990, D.C. Law 8-137, § 3, 37 DCR 2631.)

Section references. — This section is referred to in § 33-1011.

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1003. License requirements.

(a) To obtain a license to manufacture, distribute, or wholesale any drug, any person who has a principal place of business in the District shall submit a completed application form with the required application fee to the Mayor and comply with the requirements of this chapter and the rules issued pursuant to this chapter.

(b) If a person manufactures, distributes, or wholesales any drug at more than one place of business in the District, the person shall apply for a separate license for each place of business.

(c) If a licensee manufactures, distributes, or wholesales a drug not listed on the application, the licensee shall notify the Mayor prior to the commencement of the activity.

(d) If a licensee ceases to manufacture, distribute, or wholesale any drug listed in the application, the licensee shall notify the Mayor of the change no later than 7 days after ceasing the activity.

(e) Each licensee shall maintain records as required by the Mayor, including but not limited to the quantities of each drug manufactured, distributed, or wholesaled daily and the name, address, purchaser, place of delivery, and quantity of any drug sold, transferred, or distributed by a licensee. (June 13, 1990, D.C. Law 8-137, § 4, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1004. **Licensure of a drug manufacturer, distributor, or wholesaler.**

The Mayor shall make available a license application form that requests:

(1) The name of the applicant and the address of the place of business for which the applicant seeks a license;

(2) If the applicant is a corporation, the name and address of each officer or director of the corporation and each stockholder who owns 10% or more of any one class of stock in the corporation or who owns 10% or more of the total stock of the corporation;

(3) If the applicant is a partnership or joint venture, the name and address of each partner or joint venturer. If a partner or joint venturer is a corporation, any information required pursuant to paragraphs (2) and (9) of this section shall be provided by the partner or joint venturer;

(4) A description of the activity for which the applicant seeks a license;

(5) A list of any drugs that the applicant proposes to manufacture, distribute, or wholesale in the District;

(6) Proof of current approval by the United States Food and Drug Administration for registration of producers of drugs and medical devices pursuant to § 510 of the Federal Food, Drug and Cosmetic Act ("Food, Drug and Cosmetic Act"), approved June 25, 1938 (52 Stat. 1040; 21 U.S.C. 360);

(7) If the applicant proposes to manufacture, distribute, or wholesale a controlled substance as defined in § 102 of the Drug Abuse Prevention and Control Act, approved October 27, 1970 (84 Stat. 1242; 21 U.S.C. 802), proof of current registration with the Mayor and the United States Drug Enforcement Administration;

(8) A valid certificate of occupancy; and

(9) A certificate of good standing from the Mayor if the applicant is a corporation. (June 13, 1990, D.C. Law 8-137, § 5, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

Editor's notes. — The reference to "§ 510 of the Federal Food, Drug and Cosmetic Act" ap-

pearing in (6) was corrected from "§ 360 of the Federal Food, Drug and Cosmetic Act" as it appeared in D.C. Law 8-137.

The reference to "§ 102 of the Drug Abuse

Prevention and Control Act" appearing in (7) Prevention and Control Act" as it appeared in
was corrected from "§ 802 of the Drug Abuse D.C. Law 8-137.

§ 33-1005. Renewal of license.

Prior to the expiration of a license, the Mayor shall mail a renewal notice to the licensee that includes:

- (1) The expiration date of the current license;
- (2) The date by which the renewal application must be received by the Mayor in order for the renewal license to be issued and mailed to the licensee before the licensee's current license expires;
- (3) The amount of the renewal fee; and
- (4) Any other information the Mayor deems appropriate or necessary to renew the license. (June 13, 1990, D.C. Law 8-137, § 6, 37 DCR 2631.)

Legislative history of Law 8-137. — See
note to § 33-1001.

§ 33-1006. Conditional license.

The Mayor may issue a conditional license to a person if the person does not meet all of the requirements of this chapter, the rules issued pursuant to this chapter, or any applicable federal law, provided the failure to meet the requirements does not endanger the health, safety, or welfare of the community, and the Mayor mandates that the requirements be met by a specific date. (June 13, 1990, D.C. Law 8-137, § 7, 37 DCR 2631.)

Legislative history of Law 8-137. — See
note to § 33-1001.

§ 33-1007. Registration of an out-of-state drug manufacturer, distributor, repackager, or wholesaler.

(a) An out-of-state drug manufacturer, distributor, or wholesaler who conducts distribution activities within the District shall register with the Mayor on a form prescribed by the Mayor, renew the registration as required by rule, and pay the required registration fee.

(b) A person registered to conduct distribution activities within the District shall be licensed or registered and in good standing under federal law and the laws of the state in which the person is incorporated or has a principal place of business.

(c) The Mayor may withdraw a registration for failure to maintain a license or registration in good standing under state or federal law. (June 13, 1990, D.C. Law 8-137, § 8, 37 DCR 2631.)

Legislative history of Law 8-137. — See
note to § 33-1001.

§ 33-1008. Inspections.

(a) The Mayor shall conduct an on-site inspection of an applicant's facility before a license is granted.

(b) The Mayor, at any reasonable hour and consistent with constitutional guidelines, may enter a facility to conduct an announced or unannounced inspection of the facility to determine if the facility is in compliance with this chapter, the rules issued pursuant to this chapter, or any other District or locally enforceable federal law applicable to the manufacture, distribution, or wholesale of drugs. (June 13, 1990, D.C. Law 8-137, § 9, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1009. Summary action.

(a) If the Mayor determines that the conduct of a licensee presents an imminent danger to the health and safety of the residents of the District, the Mayor may suspend or revoke the license, or convert the license to a conditional license of the drug manufacturer, distributor, or wholesaler prior to a hearing.

(b) At the time of the suspension, revocation, or restriction of a license, the Mayor shall provide the licensee with written notice that states the action being taken, the basis for the action, and the right of the licensee to request a hearing.

(c) A licensee shall have the right to request a hearing within 3 days of service of notice of the suspension, revocation, or restriction of the license. The Mayor shall hold a hearing within 3 days of receipt of a timely request and shall issue a decision within 3 days of the hearing.

(d) The Mayor shall inform the licensee of the decision in writing and provide findings of fact and conclusions of law. The findings shall be supported by reliable, probative, and substantial evidence. The Mayor shall provide a copy of the decision to each party to a case or to his or her attorney of record.

(e) Any person aggrieved by a decision pursuant to this section may file an appeal with the Mayor within 10 days of the decision. (June 13, 1990, D.C. Law 8-137, § 10, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1010. Suspension, denial, or revocation.

(a) The Mayor may deny, suspend, or revoke a license, or convert the license to a conditional license, if the Mayor determines that:

(1) The person has violated a provision of this chapter, the rules issued pursuant to this chapter, or any other applicable federal or District law; or

(2) The person fraudulently or deceptively obtained or attempted to obtain a license in violation of this chapter, the rules issued pursuant to this chapter, or any other applicable federal or District law.

(b) The Mayor shall revoke any license issued pursuant to this chapter upon conviction of the licensee for a criminal violation of this chapter, the rules issued pursuant to this chapter, or any applicable federal law. (June 13, 1990, D.C. Law 8-137, § 11, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1011. Criminal action.

A person who willfully violates § 33-1002(1) is guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$5,000 for the first offense or \$10,000 for the second or subsequent offense, imprisoned for not more than one year, or both. Each day that a violation continues is a separate violation under this chapter. (June 13, 1990, D.C. Law 8-137, § 12, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1012. Civil infractions.

Civil fines, penalties, and fees may be imposed as sanctions for any violation of this chapter or the rules issued pursuant to this chapter, pursuant to Chapter 27 of Title 6. (June 13, 1990, D.C. Law 8-137, § 13, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1013. Cease and desist order; embargo.

(a) If the Mayor determines that a hazardous condition exists that may endanger the health, safety, or welfare of the community, the Mayor may issue a cease and desist order to require a violator to cease operation immediately. Any person subject to a cease and desist order may appeal the cease and desist order within 7 days, excluding Saturdays, Sundays, and legal holidays, but shall be required to comply with the order pending appeal. The Mayor shall hold a hearing within 7 days of the receipt of a timely request and issue a decision within 7 days after the hearing.

(b) If the Mayor determines that a drug is adulterated or misbranded, the Mayor may order that the drug be removed from availability for distribution, sale, consumption, or use, or that the drug be destroyed or embargoed. (June 13, 1990, D.C. Law 8-137, § 14, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1014. Rules.

(a) The Mayor shall issue rules pursuant to this chapter in accordance with the provisions of subchapter I of Chapter 15 of Title 1.

(b) The proposed rules shall include, but not be limited to:

- (1) A schedule of license fees;
- (2) Standards for the exemption of certain employees employed by a licensed manufacturer, distributor, or wholesaler;
- (3) Procedures to govern the issuance, denial, renewal, suspension, conversion, or revocation of a license; and
- (4) Standards pertaining to labeling, handling, recordkeeping, and storage. (June 13, 1990, D.C. Law 8-137, § 15, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

§ 33-1015. Exceptions.

This chapter shall not apply to any cosmetic unless the cosmetic is a drug as defined by § 201 of the Food, Drug and Cosmetic Act. (June 13, 1990, D.C. Law 8-137, § 16, 37 DCR 2631.)

Legislative history of Law 8-137. — See note to § 33-1001.

References in text. — Section 201 of the Food, Drug and Cosmetic Act is codified at 21 U.S.C. § 321.

Editor's notes. — The reference to “§ 201 of the Food, Drug and Cosmetic Act” was corrected from “§ 321 of the Food, Drug and Cosmetic Act” as it appeared in D.C. Law 8-137.

TITLE 34. HOTELS AND LODGING HOUSES.

Chapter

1. Rights and Liabilities..... §§ 34-101 to 34-103.

CHAPTER 1. RIGHTS AND LIABILITIES.

Sec.

34-101. Liability for loss or destruction of, or damage to, personal property of guests.

34-102. Lien on personal property of guests or patrons for amount due; satisfac-

Sec.

tion by public sale; application of proceeds.

34-103. Sale of unclaimed personal property; application of proceeds.

Cross references. — As to smoke detector requirements, see §§ 5-529 to 5-538.

As to hotel occupancy tax, see Chapter 32 of Title 47.

§ 34-101. Liability for loss or destruction of, or damage to, personal property of guests.

(a) If a hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests: (1) provides a suitable depository (other than a checkroom) for the safekeeping of personal property (other than a motor vehicle); and (2) displays conspicuously in the guest and public rooms of that establishment a printed copy of this section (or summary thereof); that establishment shall not be liable for the loss or destruction of, or damage to, any personal property of a guest or patron not deposited for safekeeping, except that this sentence shall not apply with respect to the liability of that establishment for loss or destruction of, or damage to, any personal property retained by a guest in his room if the property is such property as is usual, common, or prudent for a guest to retain in his room. In the case of any personal property of a guest or patron deposited in such a depository for safekeeping, that establishment shall be liable for the loss or destruction of, or damage to, that property to the extent of the lesser of \$1,000 or the fair market value of the property at the time of its loss, destruction, or damage.

(b) If a hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests maintains a checkroom (conspicuously designated as such) where guests and patrons may deposit personal property, that establishment shall, if it conspicuously posts a printed copy of this section (or summary thereof), be liable for the loss or destruction of, or damage to, that property only to the extent of the lesser of \$200 or the fair market value of the property at the time of its loss, destruction, or damage unless the destruction or damage is caused by its agent or servant. (Dec. 8, 1970, 84 Stat. 1395, Pub. L. 91-537, § 1; 1973 Ed., § 34-106.)

Cross references. — As to licensing of buildings containing living quarters, see § 47-2828.

Relationship of innkeeper and guest not

established. — One who is merely a customer at a bar, a restaurant, a barbershop or newsstand operated by a hotel does not thereby establish the relationship of innkeeper and

guest. *Blakemore v. Coleman*, 701 F.2d 967 (D.C. Cir. 1983).

§ 34-102. Lien on personal property of guests or patrons for amount due; satisfaction by public sale; application of proceeds.

(a) A hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests has a lien upon and may retain possession of, any personal property belonging to, or under the control of, a guest or patron of that establishment, for the amount due that establishment from that guest or patron for lodging, food, or other item of value, except that the amount of the lien authorized by this subsection may not exceed \$1,000.

(b)(1) If, within 30 days after his property has been retained under subsection (a) of this section, a guest or patron fails to pay the establishment retaining that property any amount due that establishment for lodging, food, or other item of value, that establishment may sell that property at a public sale. Prior to that sale, the establishment shall send, by registered or certified mail, to the last known address of that guest or patron a demand for payment of the amount due, and shall publish a notice of sale once a week for 3 successive weeks in a daily newspaper of general circulation published in the District of Columbia. That notice shall state:

(A) That the purpose of the sale is to satisfy the lien granted by subsection (a) of this section;

(B) The amount for which that lien is granted, including storage charges;

(C) The day, time, and place of sale; and

(D) A description of the property including, in the case of the sale of a motor vehicle, the make, type, year, model number, serial number, engine number, and the year and license registration number of that motor vehicle.

(2) In the case of the sale of a motor vehicle, a notice shall be given to any person whose security interest, lien, or other claim upon that motor vehicle is recorded with the motor vehicle registry of the state (including the District of Columbia) of registration of that motor vehicle. That notice shall be given at least 15 days prior to the date of sale.

(c)(1) The proceeds of a sale of property made under subsection (b) of this section shall be applied as follows:

(A) To cover the expenses of the storage and sale of the property; and

(B) To discharge any security interest, lien, or other claim upon the property in the order of priority provided for by law.

(2) Any amount remaining after the application provided for by subparagraphs (A) and (B) of paragraph (1) of this subsection shall be paid to the party entitled to the remainder if that party is known and can be located. If that party is not known or cannot be located within one year after the date of the sale, the establishment shall pay, within a reasonable time, the remainder to the government of the District of Columbia. (Dec. 8, 1970, 84 Stat. 1395, Pub. L. 91-537, § 2; 1973 Ed., § 34-107.)

Cross references. — As to service by publication on nonresidents and absent defendants, see § 13-336.

§ 34-103. Sale of unclaimed personal property; application of proceeds.

(a)(1) A hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests may sell at a public auction any personal property that has been deposited for safekeeping, checked, or left unclaimed at that establishment for more than 90 days. If the owner of that property is known, the establishment shall, at least 15 days before that sale is held, send, by registered or certified mail, a notice to the owner at his last known address stating:

(A) That the purpose of the sale is to dispose of unclaimed property;

(B) The amount of storage and other charges (including interest on those charges) against that property;

(C) The day, time, and place of sale; and

(D) A description of the property including, in the case of the sale of a motor vehicle, the make, type, year, model number, serial number, engine number, and the year and license registration number of that motor vehicle.

(2) In the case of the sale of a motor vehicle, a notice shall be given to any person whose security interest, lien, or other claim upon that motor vehicle is recorded with the motor vehicle registry of the state (including the District of Columbia) of registration of that motor vehicle. That notice shall be given at least 15 days prior to the date of sale.

(b)(1) The proceeds of a sale of property made under subsection (a) of this section shall be applied as follows:

(A) To cover the expenses of the storage and sale of the property (including interest on those charges); and

(B) To discharge any security interest, lien, or other claim upon the property in the order of priority provided for by law.

(2) Any amount remaining after the application provided for by subparagraphs (A) and (B) of paragraph (1) of this subsection shall be paid to the party entitled to the remainder if that party is known and can be located. If that party is not known or cannot be located within one year after the date of the sale, the establishment shall pay, within a reasonable time, the remainder to the government of the District of Columbia. (Dec. 8, 1970, 84 Stat. 1396, Pub. L. 91-537, § 3; 1973 Ed., § 34-108.)

Cross references. — As to service by publication on nonresidents and absent defendants, see § 13-336.

Section references. — This section is referred to in § 42-215.



